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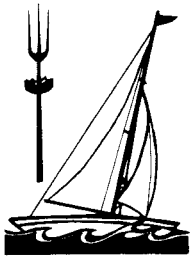
December 4, 2003

TO: Small Craft Harbor Commission  
FROM: Stan Wisniewski, Director *Stan W*  
SUBJECT: **COMMISSION AGENDA –December 10, 2003**

Enclosed is the December 10, 2003 meeting agenda, together with the minutes from your meetings of October 8, 2003 and November 12, 2003. Also enclosed are reports related to agenda items 3a, 3b, 5a, 5b and 6a.

Please call me if you have any questions or need additional information.

SW:tlh  
Enclosures



# COUNTY OF LOS ANGELES

SMALL CRAFT HARBOR COMMISSION

(310) 305-9527



Harley A. Searcy, Chairman  
Carole B. Stevens, Vice-Chairperson  
John C. Law  
Russ Lesser  
Joe Crail

## AGENDA

### SMALL CRAFT HARBOR COMMISSION MEETING

DECEMBER 10, 2003

9:30 a.m.

BURTON W. CHACE PARK COMMUNITY BUILDING

13650 MINDANAO WAY

MARINA DEL REY, CA. 90292

1. Call to Order and Action on Absences
2. Approval of Minutes: Meetings of October 8 and November 12, 2003
3. **REGULAR REPORTS** (DISCUSS REPORTS)
  - a. Marina Sheriff
    - Crime Statistics
    - Enforcement of Seaworthy & Liveaboard Sections of the Harbor Ordinance
  - b. Marina del Rey and Beach Special Events
4. **OLD BUSINESS**

None
5. **NEW BUSINESS**
  - a. Joint Recommendation of the Chief Administrative Officer and Director of the Department of Beaches and Harbors to Approve and Authorize Execution of Limited Forbearance Agreement to Facilitate Amendment to Amended and Restated Lease – Parcel 125R (Marina City Club) – Marina del Rey (RECOMMEND TO BOARD)
  - b. Consent to Assignment of Leasehold Interest and Option for Amended and Restated Lease to Facilitate Redevelopment – Parcel 50T (Marina Waterside Center) – Marina del Rey (RECOMMEND TO BOARD)

6. **STAFF REPORTS**

(DISCUSS REPORTS)

- a. Ongoing Activities
  - Board Actions on Items Relating to Marina del Rey
  - Design Control Board Minutes

- b. Marina del Rey Convention and Visitors Bureau

(PRESENTATION BY  
EXECUTIVE DIRECTOR  
OF MdR CVB)

7. **COMMUNICATION FROM THE PUBLIC**

8. **ADJOURNMENT**

**PLEASE NOTE:**

1. The Los Angeles County Board of Supervisors adopted Chapter 2.160 of the Los Angeles Code 93-031 relating to lobbyists. Any person who seeks support or endorsement from the Small Craft Harbor Commission on any official action must certify that he/she is familiar with the requirements of this ordinance. A copy of the ordinance can be provided prior to the meeting and certification is to be made before or at the meeting.
2. The agenda will be posted on the Internet and displayed at the following locations at least 72 hours preceding the meeting date:

Department of Beaches and Harbors' Website Address: <http://beaches.co.la.ca.us>

Department of Beaches and Harbors  
Administration Building  
13837 Fiji Way  
Marina del Rey, CA 90292

MdR Visitors & Information Center  
4701 Admiralty Way  
Marina del Rey, CA 90292

Burton Chace Park Community Room  
13650 Mindanao Way  
Marina del Rey, CA 90292

Marina del Rey Library  
4533 Admiralty Way  
Marina del Rey, CA 90292

Si necesita asistencia para interpretar esta informacion llame al (310) 305-9546.

Small Craft Harbor Commission  
Meeting of October 8, 2003  
Minutes

**Commissioners Present:**

Harley Searcy, Chairman  
Carole Stevens, Vice-Chairperson  
John Law  
Joe Crail

**Excused Absences:**

Russ Lesser

Department  
of Beaches &  
Harbors:

Stan Wisniewski, Director  
Roger Moliere, Deputy Director, Asset Management & Planning Bureau  
Julie Cook, Planning Division  
Dusty Crane, Chief, Community & Marketing Services Division

Other County  
Departments:

David Michaelson, County Counsel  
Lt. Tracee Edmonds, Sheriff's Department  
Deputy Paul Carvalho, Sheriff's Department  
Debra Williams, Department of Consumer Affairs  
Rigoberto Reyes, Department of Consumer Affairs

Also Present:

Beverly Moore, Executive Director, MdR Convention & Visitors Bureau  
Richard S. Volpert, Munger, Tolles & Olson

**1. CALL TO ORDER & ACTION ON ABSENCES**

Chairman Searcy called the meeting of the Los Angeles County Small Craft Harbor Commission to order at 9:40 a.m. in the Burton W. Chace Park Community Room, Marina del Rey.

*Commissioner Law moved and Commissioner Crail seconded a motion to excuse Commissioner Lesser from today's meeting. The motion passed unanimously.*

**2. APPROVAL OF MINUTES**

Vice-Chairperson Stevens requested a revision on page 6, first sentence of paragraph 3 of the September 10, 2003 minutes. The sentence currently reads, "Vice-Chairperson Stevens said she would like to note, on behalf of G&K, that it has instituted a valet parking system for guests where she lives." The sentence should be changed to read, "Vice-Chairperson Stevens said she would like to note, on behalf of G&K, that it has instituted a valet parking system for visitors of the residents."

Vice-Chairperson Stevens explained the reason she brought up the matter was because the valet parking has worked so beautifully that she wanted to encourage other lessees to provide the same service. Mr. Wisniewski informed her that the Department would make sure the issue is brought to the lessees' attention.

*Vice-Chairperson Stevens moved and Commissioner Crail seconded a motion to approve the August 27, 2003 minutes. The motion passed unanimously.*

*Commissioner Law moved and Commissioner Crail seconded a motion to approve the September 10, 2003 minutes as amended by Vice-Chairperson Stevens. The motion passed unanimously.*

**3. REGULAR REPORTS**

**a. Marina Sheriff's Department Report**

**--- Crime Statistics**

Lt. Tracee Edmonds reported a reduction in crime in the Marina area, particular in assaults. There are a larger number of grand thefts reported for the month of September, however, most of them could be attributed to bicycle thefts. Someone, or several persons, stole bikes that were either locked in storage facilities or chained to poles in the underground parking structures.

**--- Enforcement of Seaworthy & Liveaboard Sections of the Harbor Ordinance**

Deputy Paul Carvalho reported little change for the warnings and notices to comply that were issued. There are changes in the amount of derelict vessels that are docked. There are 21 vessels ready for disposal and an additional six vessels awaiting lien sale procedures. The bids for the disposal of the vessels have been sent and the closing date was yesterday. The Department should be hearing shortly who was awarded the bid.

**b. Marina del Rey and Beach Special Events**

Mr. Wisniewski reported that Marina events occurring in the month of October include the Marina del Rey Outdoor Adventures Final Sessions, which the Department sponsors. The activities include an Ocean Experience Program on October 11, a Bird Watching Experience on October 23 and a Harbor Kayaking Program on October 25.

The MdR/Beach Special Events Report also includes information on the Fisherman's Village Weekend Concert Series and The Discover Marina del Rey Day, scheduled for Sunday, October 12. This event involves the participation of several County departments and offer games and activities that children will enjoy.

Mr. Wisniewski said that October's beach event is the Dolphin Run Triathlon, scheduled for October 11 and 12 at Zuma Beach.

**4. OLD BUSINESS**

**a. Mediation Services for Marina del Rey Apartment & Boat Slip Tenants**

Mr. Wisniewski introduced the Department of Consumer Affairs' (DCA) representatives, Ms. Debra Williams and Mr. Rigoberto Reyes, who are attending today's meeting to discuss their Department's services.

Ms. Williams informed the Commission that she heads the DCA's Mediation Program. She said the program handles disputes between landlords and tenants, neighbors, businesses, and vendors and consumers. The mediation service is free of charge and both parties involved in the dispute must voluntarily agree to participate. Ms. Williams said the DCA also offers: consumer protection services; a real estate fraud and information program; small claims court advisor program; dispute settlement services; and public information and community outreach.

Mr. Reyes, who is Supervising Investigator with the DCA's Investigation Division, said the DCA's Real Estate Fraud and Information Program assists consumers with any questions they have regarding real estate transactions, from first-time home buying tips to investigating complaints.

He said the Department also has a section that deals with cable companies that provide services in unincorporated sections of Los Angeles County. The Department licenses and regulates these companies and welcomes consumer feedback regarding their services. DCA's consumer protection service assists consumers who have complaints against businesses. The DCA tries to resolve the complaints for the consumer, however, if the problem cannot be resolved, the Department will assist the District Attorney's office and other agencies with preparing the case for prosecution.

Mr. Reyes said that his Department offers a broad range of services for consumers that are free of charge and branch offices are located throughout Los Angeles County.

Mr. Wisniewski informed the Commission that Mr. Pastor Herrera is Director of the Department of Consumer Affairs and he has received national awards for his excellent leadership. Mr. Wisniewski commended DCA for its work and said the Department of Beaches and Harbors is delighted to have DCA's mediation assistance.

Chairman Searcy expressed gratitude, on his own behalf and that of the Commission, to Mr. Reyes and Ms. Williams for attending today's meeting. He said that Marina del Rey residents regularly attend Commission meetings seeking redress, quite often, out of frustration and lack of information. Members of the public try to redress a situation where they feel they have been wronged and it would be helpful for DCA to assist people in formulating their claims or evaluating where they have or don't have a legal right.

Chairman Searcy said that quite often the Commission has no jurisdiction over the issues that the public brings to it, but the Commission is the only body that the public knows about. He said he is hopeful that members of the public attending today's meeting will spread the word about the Department of Consumer Affairs and avail themselves of the services that the DCA provides. Chairman Searcy added that he is sure the Department will obtain the DCA's public information material and make it available at Beaches and Harbors to interested members of the public.

Mr. Reyes informed the Commission that the Department of Consumer Affairs also conducts presentations to community organizations throughout Los Angeles County. Interested persons can contact the Department to arrange for a presentation.

Chairman Searcy opened the floor to public comment.

Carla Andrus stated, "I called the Department of Consumer Affairs and I told them about two complaints that I had. I was rerouted actually back to the Board of Supervisors. They told me that they couldn't help boaters...because it is a different thing from a regular landlord tenant thing when you are on the water. They don't have jurisdiction over that. The other complaint that I brought up was, the leases here that are not being enforced, which I thought was a very serious issue. They told me that they don't give legal advice, but they did have a phone number for legal aid. Frankly, I have been through that revolving door, but I have not been able to follow-up on it this time. I welcome this kind of situation so that we can get our complaints out, but I do have some questions...you don't have jurisdiction, they don't have jurisdiction, they don't. They reroute us to the Board of Supervisors and then we're back here. I'm always glad to be here to let you guys know our complaints. I don't know what can be done about that."

Commissioner Law requested one of the DCA representatives to respond to Ms. Andrus' comments. While Ms. Williams approached the microphone, Chairman Searcy clarified that the representative would be addressing Ms. Andrus' comment that she was unable to receive DCA assistance because DCA doesn't handle boat tenant problems.

Mr. Wisniewski said he would like to know more about the problem Ms. Andrus brought to DCA's attention. He said, for clarification purposes, that if Ms. Andrus' problem pertained to rent, the Department of Beaches and Harbors is the appropriate contact since it has jurisdiction in this area. Mr. Wisniewski suggested that Ms. Andrus contact Mr. Moliere if she has rent-related problems.

Rather than further discuss the matter during the meeting, Chairman Searcy suggested that Ms. Andrus meet with Ms. Williams after the meeting.

**5. NEW BUSINESS**

**a. Marina del Rey Convention and Visitors Bureau Renewal and Second Amendment of Funding Agreement**

Mr. Wisniewski informed the Commission that it gives him a great deal of pleasure to recommend an extension of the agreement with the Marina del Rey Convention and Visitors Bureau. He explained that the Bureau's agreement with the County is funded partially by the County of Los Angeles and largely by the hotel industry in Marina del Rey. The Department's budget contributes \$177,400 a year to the Bureau's budget. The Department also provides office space at the Visitors Center, which is worth over \$18,600 a year. The Marina hotels contribute approximately \$330,000 annually, with a self imposed 1% fee on all of their room rental rates.

Mr. Wisniewski said the Department is astounded by the Bureau's progress. Vice-Chairperson Stevens serves on its board and Ms. Moore has done an outstanding job as the Bureau's Executive Director. Mr. Wisniewski said that Ms. Moore is very dynamic and progressive and has embraced this community and brought more to it than he's seen in prior years. He added that Ms. Moore works well with the lessees, Department of Beaches and Harbors and the tenants.

Mr. Wisniewski said the Department is suggesting an extension of the Bureau's agreement for one year and he has the ability to extend it another year beyond that, so, effectively, it could become a two-year agreement. Also included in the agreement is an additional \$40,000 in funding from the Department, which is budgeted. These funds would be used for a combination of joint promotional efforts between the Department and Bureau.

Mr. Wisniewski said the Commissioners may remember that the opening of the Marina del Rey waterfront walk from Tony P's restaurant over to Marina Beach displayed a number of flags and other types of demarcations that were placed on the median strips in Marina del Rey and along the walkway. This activity was a joint effort between the Department and the Bureau. Mr. Wisniewski said that approximately \$10,000 would probably be used for future efforts of this type and the Bureau would use approximately \$30,000 to disseminate information.

Chairman Searcy opened the floor to public comment. Hearing no public comment, the following motion was made.

*Vice-Chairperson Stevens moved and Commissioner Crail seconded a motion to recommend Board approval of the renewal and second amendment of the County's funding agreement with the Marina del Rey Convention and Visitors Bureau. The motion passed unanimously.*

**b. Authorize the Chief Administrative Officer and Director of the Department of Beaches and Harbors to Enter into Exclusive Negotiations with Almar Management/Pacific Marina Development for an Option and Long-Term Lease for Development of Parcels 52R and GG – Marina del Rey**

Mr. Wisniewski said the Commission may recall previously approving a recommendation to the Board of Supervisors to authorize the Department's Request for Proposals for Development of Boat Storage Facilities on Parcels 52R and GG in Marina del Rey. He said that both parcels are County controlled and are sandwiched between the launch ramp area and the first commercial boat repair yard on Fiji Way.

Three very strong proposals for Parcels 52R and GG were received and Mr. Wisniewski expressed his delight with the Evaluation Committee's recommendation of Almar Management to develop the parcels. He said that Almar shows not only the necessary experience, but also the financial capability. The developer has a very innovative architectural design that Mr. Wisniewski believes will become an icon for the harbor. The project's design also provides more dry storage facilities than the other proposals.

Chairman Searcy asked whether the Design Control Board (DCB) has a role to play in the approval process. Mr. Wisniewski responded that the DCB would review the designs, as well as the Small Craft Harbor Commission and Regional Planning. The project also requires an Local Coastal Plan amendment, which will need Regional Planning and Coastal Commission approval. Chairman Searcy stressed that members of the public would have plenty of opportunity to provide input when public hearings are held.

Mr. Moliere explained the project's evaluation process, stating that when the Board of Supervisors authorizes the Department to issue Request for Proposals (RFPs), the Director chooses an Evaluation Committee composed of outside experts in various fields to evaluate each proposal received. In the case of the proposals for Parcels 52R and GG, there was an Evaluation Committee that included Mr. Dick Volpert, the County's chief negotiator, as well as an architect who is one of the County's design consultants, an economic consultant, and a representative from the Chief Administrative Office. The Committee also solicited advice from the County's harbor engineers, as well as a number of others. Mr. Moliere explained that the Committee went through each proposal and formulated some preliminary questions that were sent to the proposers. The Committee then interviewed the proposers and met again on several occasions to discuss various issues that were raised before they voted and formulated their recommendation.

Mr. Moliere said that Almar Management/Pacific Marina Development (Almar) is, in fact, the largest private operator of saltwater marinas on the West Coast. The company has been in business for over thirty years and has operations extending through Mexico and Hawaii. Almar's proposal extends partially over the water area of the leasehold. It has an overhead crane system that is very space efficient and quiet. It does not rely on motorized forklifts. The shell of the building is composed of polycarbonate material and it is somewhat translucent, as is the ceiling, which makes it very energy efficient. Light goes in, so the interior of the building retains ambient outdoor lights. It is also uplit and downlit at night to any degree that is appropriate so that it does present a very striking architectural presence. The building materials were chosen for their durability in salt-water environments. They don't rust and they're very durable and replaceable in terms of panels should there be any damage. Mr. Moliere added that this kind of material, in fact, is used extensively in Florida and has been tested against hurricane force winds.

Mr. Moliere continued, informing the Commission that the project will go through a full environmental review, which includes such things as wind testing, wind shadow testing, and all



the rest of the environmental processes. The facility's spaces will total 361 dry stack boat storage spaces, with an additional space for 19 vessels within the building structure to allow for queuing and launching and retrieval of the boats. It has two overhead 6-ton capacity cranes and 1,600 square feet for small boat maintenance and repair. Its staging area is for 31 vessels and 1,250 lineal feet of docking facilities. The facility will have an Americans with Disability Act compliant boat ramp and additional space for 32 mast-up sailboat surface storage spaces. It has three additional public wash-down facilities, which would augment the facilities that are already on site next door. There will be a large pedestrian promenade, a five-ton capacity boat launch hoist to assist in other launches for sailboats and other crafts, and a separate building containing a replacement for the Sheriff's boatwright shop. Operationally, it is Almar's intent to offer a lot of programs that cater to boater education. The company will sponsor seminars, boat handling classes, navigational courses and a number of other things. The facility's lobby would be built so that meeting and educational and community activities can be held.

Mr. Moliere informed the Commissioners that staff also attached to the Parcels 52R and GG Board letter the Evaluation Committee's actual report, which details the comparisons between the proposers and reasons for choosing Almar.

Commissioner Law stated, "I'm fully supportive of the notion of having dry storage. As long as I've been on this Commission, we've talked about it. It's an identified need in the Marina and I'm enthusiastic about the concept. Looking at the design, it is almost a breathtaking design and I find it to be visually highly interesting, however, I am a little concerned about the scale given the surrounding neighborhood. For example, how high is this?" Mr. Moliere responded that representatives are here today to answer the Commission's questions.

Commissioner Law said he would go ahead and identify all of his concerns so that the representatives could address them when they come to the podium: "1) I want to know about what the surrounding uses are, or, if nothing, the anticipated uses, because I want to see, if not immediately, at least in the mid-term, how this is going to fit into the general aesthetic of this part of the Marina; 2) I would like the presenter to talk a little bit about screening. As I look at this, in both drawings, I can see both through the screenings. I appreciate the fact that this is great stuff and it survives hurricanes, but I am thinking that four rows of stack boats aren't necessarily the most attractive thing to look at in that configuration. So, I would like to know how that works; and, 3) My final question, which I think is the easiest one, is parking. I see that it is point four to one and I can understand why this is not going to be a heavy generator of traffic or parking. Nonetheless, point four to one is the lowest parking ratio I think I have ever seen and I am curious about where we found a traffic engineer that had tables on dry boat storage. That is something that is used frequently."

Mr. Wisniewski said he would like to point out what the surrounding area is. To the east of this project is the Marina del Rey launch ramp. One of the concerns was addressing the effect of any wind shadowing, the prevailing wind in that area. Staff is convinced that there won't be a wind shadowing effect for the launch ramp. The Department has a Canadian firm under contract that does wind tunnel studies. The firm actually has a model of Marina del Rey and as each project in Marina del Rey proceeds, the developer will have to pay for a scale model of his particular project. It will be sent through the wind tunnel analysis by the Canadian firm, which will report back to the Department of Regional Planning. The Director of Regional Planning will determine whether or not there is an impact on boating operations. Staff have, on a preliminary basis, discussed the matter with the harbor engineer and the architects, and the prevailing winds are from the west and the northwest. They don't feel that this is going to be an issue, but the matter is something that needs to be addressed in the environmental review process.

In terms of height, Mr. Wisniewski said he has seen things that are taller in Marina del Rey and he cannot think of a better use of height in the Marina than a development that would give back to the boating community more facilities to increase boating in the harbor. This is also a commercial zone. The facility would be built on Fiji Way and on its other side are two commercial boat repair yards. A person working his way around Fiji Way would come up to Fisherman's Village. The good news is that there aren't any residential buildings and the fact that it has such a breathtaking design will be an asset given what is being planned for Chace Park's expansion. Parcel 77's facilities would be relocated to Parcels 52R and GG, which then provides the capability of expanding Chace Park. The Department has an option to buy Parcel 77, but only if it could successfully come up with a project on Parcels 52R and GG.

Mr. Wisniewski said what he likes about the Almar proposal is that the typical forklifts won't be going out in the public eye and making a lot of noise. There will be an overhead crane system inside that is quiet and won't be heard on the outside. He said he doesn't think the facility's fitting into the surrounding area will be much of an issue.

Mr. Moliere stated that the project's screening, which is on view today, is actually what would be seen from the water across the channel. From the street side, people can't really see any of the rack facilities. The entire building is enclosed except for the portion from which the boats are launched. Mr. Wisniewski added that, from a parking standpoint, as he understands it, the County's parking requirement would be met.

Commissioner Law stated that he is interested in scale and he still hasn't been given the answer to his question regarding height. He said that scale is a hard thing to figure out because judgment has to be made regarding what it would look like. Mr. Moliere responded that Mr. Richard Orne, an architect, was a member of the Evaluation Committee. He is part of the team of EDAW, which is the Marina's design consultant firm. Mr. Orne specifically looked at issues, such as the fit for each individual project to its surrounding in the entire Marina. Mr. Orne looked at the issues of scale and design and the Committee also examined these issues very carefully.

Chairman Searcy suggested that, in the future, staff use UCLA's simulation software to present design plans to the Commission. A computer with this software was previously used for a Commission presentation and it was very effective in showing various aspects of the project.

Relative to the scaling issue, Mr. Wisniewski stated that as the project works its way through the regulatory process, the Design Control Board will have the same questions as the Small Craft Harbor Commission, plus 100 more. If Almar is selected, it would have to invest a significant amount of money to ensure that the scaling is appropriate for the area.

Mr. Jeffrey Pence, one of the owners of Pacific Marina Development, Inc, informed the Commissioners that the project is 40' feet up in the air, which is the height of a three-story office building. He said the pink apartment building that could be viewed from Chace Park is about 5' lower from the top of the planned building.

Commissioner Law asked whether the height extends from the base of the building to the top. Mr. Pence responded that in the middle, because of the gantry crane, it goes up five more feet, which is towards the middle because of the equipment. Basically, 85% of the building is 40' up in the air. In other words, the side scan all the way up is 40' with an additional 5' in the center. Chairman Searcy asked whether the peak of the building is 45', including the gantry area. Mr. Pence responded that the peak is 45' and the gantry area is probably 20' or 30' wide.

As for the building's screening, Mr. Pence displayed a sample of the material that would be used and he explained that the material was selected because of the ability to highlight it and make it

an architectural focal point at night. Additionally, because the California Coastal Commission is concerned about the type of materials used, he wanted to make sure that there would not be shadow lines over the water and that the materials would meet Coastal Commission approval. He said the material is regulated for a 220 mile an hour wind. The material takes away 99% of the UV rays and is currently being used in an office building in London. The material is also being used in some schools in Southern California. He said that backlighting is the key and if a decision is made not to do backlighting, the material couldn't even be seen through in the evening.

Commissioner Law asked whether people, during the daytime, would be able to view the boats through the openings that are at the ends of the building. Mr. Pence responded, "no."

Commissioner Crail said he's concerned about the building's extension into the basin and that boats won't have room to turn around. Additionally, he expressed concern about the boats being launched and whether they would have space to set up in the water. Mr. Pence responded that there will be an ability to stage in the water upwards of 60-70 boats at one time around the periphery of the dock. If the facility's interior staging area is added to this number, approximately 90 boats could be staged. He said that all kinds of time trials were conducted and his firm knows the time needed to take the boat from the upper furthest rack at the back of the facility and put it into the water. Almar also knows how long it takes to raise the boat up and wash it out. Mr. Pence said that an elevator system would be included in the design so that at least 2 vessels, if not 4, could be used in the elevator system.

Commissioner Crail said, as a boater, he would hate to see the elimination of the extra space that boaters use to set up. Mr. Pence said that nautical engineers have looked at the entire basin and the design will not deter any vessels coming out of the ramp system or any vessels going up and down the harbor.

Chairman Searcy asked about the existing boat repair facilities. Mr. Wisniewski responded that there are existing boat repair facilities on Parcel 77. The new facilities will have to provide at least the same level of service that's currently available on Parcel 77. Mr. Pence commented that there would be up to a 1,600 square foot maintenance facility for repair services.

Chairman Searcy asked whether the developer has taken the opportunity to tour the existing facilities and meet with the existing operators. Mr. Pence responded that he has. Chairman Searcy informed him that the Marina is a small boating community with a lot of goodwill and the current operators have institutional knowledge from which the developer could benefit.

Commissioner Law asked whether the new facility's protrusion is approximately 200'. Mr. Moliere responded that it is a little under 200' from the pier line, which is the length of the adjoining docks.

Commissioner Law asked whether the protrusion extends as far as the docks. Mr. Moliere responded "yes." Mr. Pence said the facility is indented in 28' feet from the water line and there's plenty of room for boaters in slips adjacent to the property owner to be able to back in and out. He said, basically, boats need 175% of the length to come out and the design adds another 28' to this amount.

Chairman Searcy opened the floor to public comment.

Ms. Andrus said, "This is what we got in exchange for our boat slips in the Marina. This is the plan the Department came up with to mitigate the loss of our boat slips. This is a whole different way of sailing. It's not sailing and I wonder how much this is gonna cost the average guy who wants to just go out and take his boat out. Another question I would have is, what are the size

boats that this thing would accommodate? We should have a public meeting, a night meeting. I see on your agenda you have lots of major serious development like this, that's gonna take this whole regulatory process to get through all the way up to the Coastal Commission. We still don't have a public night meeting. We don't have public workshops. The night meetings that we talked about a long time ago have been over a year last May. I think it's time for the public to weigh in on these kind of plans. Maybe it's not too late. Maybe we could just keep some of the slips. I'm thinking that because I don't know what's going on at the Coastal Commission. The Department and Two Partnership are asking for an extension on their permit, so we're gonna be without slips all this time and here we are planning all this. We haven't even had a night meeting or a Local Coastal Plan; that's been put off. EDAW was brought up again. We paid that agency \$170,000 and they're supposed to be so interested in what the public has to say about these fine designs and the way the Marina's gonna look from now on and how much it's gonna cost and we haven't seen them. Where are they?"

Mr. Richard Stevens, Waterfront Investors, LLC/Bellport Group, said, "I'm the loser, but I'm not here for sour grapes. First of all, I'm here to congratulate Almar and their team for a spectacular design effort. I'm also here to tell you why we rejected the essence of the mechanics of what makes their project go. The reason I'm concerned, as Stan well knows, I've been a proponent for dry storage in this harbor for many years for a number of reasons. One of them was, real fortunately, brought home when I was on David Levine's team for Marina Harbor and we successfully went through two years of battle to rebuild Marina Harbor, which is still underway very successfully. During that period of time, the Coastal Commission staff made it eminently clear to staff here and us that the County should not come in with anymore projects to reconfigure this Marina until they have the small boat problem resolved and lean toward dry stack. So, the importance of dry stack I would support whether we win, lose or otherwise. It's critically important in this harbor and along with that, it's critically important to have it now."

Mr. Stevens continued, stating, "A word of caution I want to put out here, along with a suggestion, is that if we spend three years and this project is shot down for some very valid reasons in my opinion, we start at ground zero three years from now. That's why our proposal was very pedestrian, not imaginative, but it met the code and criteria of the Coastal Commission and operations. We're not proud of our drawing except that it works, it has worked, it will work, and it complied with the RFP requirements. We suggested to staff that they start all over with a new redesign criteria and we would certainly help them do that. How could we do that? First of all, our company is as large as Almar. I've been in the business 40 years. I've been in this harbor 25 years; I'm involved in it now and deeply....We rejected these design criteria because, in 40 years of experience of our team with the Coastal Commission and all government agencies, we never knew of anyone who was allowed to put a structure over the bulkhead line, no one, and that's the backbone of this deal. Secondly, the overhead crane system has been around in industrial applications for 90 years and it works wonderfully. It has not worked well in the marine industry. There's less than a handful of overhead crane systems in existence in this industry and we know most of them. Our manufacturer knows them all. Our big concern is that when that overhead crane breaks down, your whole system stops, and unfortunately, it does break down. I have a whole bunch of other things, but I won't take anymore time, although I think it's warranted. I would suggest to you that, prior to taking this through the laborious passage for two or three years until the environmentalists and coastal staff shoot you down for going over the water, I would suggest the County, before awarding this contract, put together a team of their own to go down and sit with the top people at Coastal."

Commissioner Law expressed his appreciation to Mr. Stevens for his comments. He asked Mr. Stevens whether Mr. Stevens believes the odds of the Coastal Commission approving Almar's plans are slim to none. Mr. Stevens responded, "correct." Mr. Stevens informed Commissioner Law that his company operates the only dry stack operation on the West Coast and has been

before the Coastal Commission 22 times. He said he cannot conceive of the Coastal Commission setting a precedent of allowing Almar's proposed facility to go over the water, otherwise, the door would be open for restaurants, office buildings and anything else to extend into the water.

Mr. Wisniewski commented that the Department is looking for innovative designs because the proposed facilities will be in the Marina for quite some time. He said that unimaginative pedestrian development inside of the Marina should not be endorsed by the Commission or Department. Mr. Wisniewski said that Almar is very experienced and it would be very costly for Almar to go through the regulatory process if Almar did not believe it had a reasonable chance of obtaining approval. Also, if the Evaluation Committee did not believe there was a reasonable chance, the Committee would not recommend Almar's proposal, nor would the developer have submitted the proposal.

Chairman Searcy commented that the regulatory process that is in place would give members of the public, environmental community, Coastal Commission, and other agencies the opportunity to review the project's plans and provide input. Mr. Wisniewski said this process would take time. He explained that the Department is not interested in backing a losing horse, that's why the Department has traditionally insisted that the lessee parallel track the regulatory process along with the proprietary process. While the Department is negotiating a term sheet, it will encourage the developer to engage in the regulatory process and the Department will pull the plug if a problem arises.

Vice-Chairperson Stevens said she is uncomfortable after hearing Mr. Stevens' comments. Commissioner Law expressed his agreement with Commissioner Crail's earlier comments about the proposal. He said that, "I will support this, however, I have real concerns about the design and the scale....This is a tremendous departure from the architecture that exists here. I suppose it's closest to the high rise buildings that the City allowed to have built on its property, which I wish the County, the adjacent landowner, might have taken a position on. I'm not discouraging a modern design. I'm a modest student of it. I am concerned about this because I believe it has been a long-term objective of both the Department and the Commission to have dry boat storage. I'm not persuaded by arguments about whether or not this is useful. It's proven to my satisfaction that it is useful and it is desirable in the Marina and provides other people, a different kind of user, a way to access first class facilities. I have no concerns about the applicant's ability to manage these projects. From reading the materials, they have a demonstrated record. To take one exception with what the Chairman said, I agree we have a very intensive regulatory process the developer must go through. I also agree with the Director's view that they do so at their own risk, however, the postponement of a long held goal from the County's standpoint, if, in fact, what the other gentleman indicates is true that, in the past, the Coastal Commission did not allow projects to protrude over the bulkhead, also has a risk for us. It could be three years down the road and we have to start over. Maybe we'll be wiser. Maybe we'll be smarter. Maybe we were smart in the beginning. We'll find out. Still, we'll be sitting here, or our successors will be sitting here three years from now thinking that it would be nice to have that dry storage."

Mr. Wisniewski commented that he didn't think the regulatory process would take three years. Mr. Moliere said that, on the regulatory side, once the coastal process is started, it takes less than a year. He pointed out that Almar submitted an alternate design and there are ways to, alternatively, not go over the water, which lowers the total boat count, but not lower than that of the other two proposals.

Chairman Searcy said the real key for him is that there is a process in place that needs to be followed and it would be good to let that process continue. A large part of the process will involve the continued examination of design considerations. Chairman Searcy said he's glad to hear the

regulatory process would not take three years and the Commission's approval today would allow the process to move along. He said he is also hopeful that the project's proponents really hear the concerns expressed at today's meeting.

Commissioner Crail said he could not support the proposal since a 40' facility over the water is too much. He understands the lessee has the right to put slips there, but the facility on the water is a new step that he doesn't like and he would like the plans to be further reviewed. Commissioner Crail added that he would really like the dry stack storage placed on the shore, as originally proposed.

Commissioner Law said he would support the plans reluctantly. He is hopeful that not just the developer, but also the Evaluation Committee and Department, seriously consider the issues that were raised today. Commissioner Law said that he doesn't want to delegate the Commission's responsibility to the Design Control Board, which has its own process, as does the Coastal Commission and Regional Planning. He again expressed his reluctance to support the proposal, but said he would go ahead and support it since he believes in the goal and relies, to some degree, on the Evaluation Committee to mitigate some of the identified problems.

Vice-Chairperson Stevens asked Mr. Volpert, who was a member of the Evaluation Committee, to comment on the Committee's reasons for rejecting the other two proposals. Mr. Volpert responded that, in the case of Waterfront Investors [Mr. Stevens' group], the Committee had a problem with its design and amount of land used for parking and the revenues. As for Kor Realty, it was a good plan, but the net add to the Marina was less in terms of both revenue and what the company would earn.

Mr. Moliere explained that the second ranked proposal, Kor Realty, combined Parcel 53, which it currently owns. Kor Realty had an excellent design, but it didn't have experience running dry stack storage facilities, as do the other two proposers. Also, in the proposal, much of the revenue to the County was attributable to increased retail uses on Parcel 53 and it was as much an issue of retail intensification as it was for boat storage and it didn't have the ability to store as many boats.

Mr. Moliere said the third ranked proposal, Waterfront Investors, scored significantly lower for a number of reasons. Because of its design, Waterfront Investors was required to do an on site structured parking facility, which added approximately \$2 million to costs and eliminated the ability of the project to pay any rent to the County at all for at least five years. After that amount of time, it was very contingent upon Waterfront Investors meeting a certain investment return criteria on the amount of its investment.

Mr. Moliere said that all three designs certainly would work. The Committee looked very closely at the regulatory issues and Almar, in fact, has had experience going before the Coastal Commission many times since it is the largest saltwater operator on the West Coast and is very familiar with coastal issues.

*Commissioner Law moved and Chairman Searcy seconded a motion to authorize the Chief Administrative Officer and Director of the Department of Beaches and Harbors to Enter into Exclusive Negotiations with Almar Management/Pacific Marina Development for an Option and Long-Term Lease for Development of Parcels 52R and GG – Marina del Rey. The motion passed with Chairman Searcy, Vice-Chairperson Stevens and Commissioner Law voting in favor. Commissioner Crail opposed.*

c. **Authorize the Chief Administrative Officer and Director of the Department of Beaches Harbors to Enter into Exclusive Negotiations for Lease Options and Long-Term Leases/Lease Extensions for Three Development Projects on Parcels NR/33R, Parcel IR and Parcels GR/22R – Marina del Rey**

Mr. Wisniewski said that staff is requesting Commission recommendation to the Board of Supervisors to authorize the Department to engage in negotiations for three development projects around Marina Beach. He said the projects result from an RFP that the Commission and Board of Supervisors previously approved.

Mr. Wisniewski explained that the proposals are for County parking lots GR, IR and NR. The goal is to revitalize this area into a resort theme-type attraction. The Department solicited for visitor-serving uses with one minor exception for Parcel NR, which the Department would consider for a mixed-used development. He said three exciting proposals were received and when the development is completed, along with renovation of the existing projects in the area, there will be a more user-friendly, dramatically improved Marina Beach.

Mr. Wisniewski explained that when the Department receives proposals to RFPs, an Evaluation Committee that he appoints reviews them. Typically, the Committee is comprised of the Department's economic consultant, Mr. Dick Volpert, as well as an architect and a representative from the Chief Administrative Office's (CAO) Asset Management Section. Mr. Volpert and the CAO representative team with the Department to ensure that the Board of Supervisors remains very well informed about the development's progress.

At this point in the meeting, Vice-Chairperson Stevens announced a short break to allow the public an opportunity to view the design plans on display at the front of the community room.

After the meeting reconvened, Mr. Moliere informed the Commission that the Department received five excellent proposals in response to the RFP issued for three separate parking lots around Marina Beach. He explained that two of the five proposals that were rejected were competing with one of the proposals chosen for Parcel NR, which was so excellent that the other proposals suffered by comparison. The Department allowed for combined proposals, which enabled the adjoining leasehold to submit its own proposal or join another proposer to include both the RFP parcel and the adjoining parcel. On Parcel NR, proposals for mixed-use serving (a combination of residential and visitor-serving), were allowed as long as the residential component was on the upper floors in order to preserve the street level serving and beach level visitor-serving components.

Mr. Moliere informed the Commission that the selected proposers are at today's meeting to address members' questions.

Mr. Wisniewski asked Ms. Cook to point out the parcels on the display board as Mr. Moliere discusses each one. Mr. Wisniewski commented that all of the parking lots under discussion are public and the Department is required to replace lots displaced by development. Parcel IR is at the major intersection of Via Marina and Admiralty Way and the RFP requires opening of the viewshed to the beach. He said that some obstructions to the view were recently removed, but the Department wants to do something more significant so that when people enter the harbor they know they are in a harbor, which was not the way Marina del Rey was originally designed.

-- **EMC Proposal for Parcels 33R and NR**

Mr. Moliere said the EMC proposal is for Parcel NR and the adjoining Parcel 33, which is currently Harbor House Restaurant and Edie's Diner. The proposal will place 292 residential units above facilities on the lower beach and street level, which includes 22,000 square feet of retail and 13,000 square feet of restaurant space. The proposal preserves a lot of view corridor and has heavy landscaping and a public rooftop observatory that will be open to the public seven days a week through the early evening hours. Retail uses not currently in the Marina, such as specialty food and supermarket-type service, is included. The proposal fully contains all of the parking both for replacement of the existing parking and the new parking that is required for the proposed uses.

Mr. Moliere said the Evaluation Committee thought that EMC did a particularly good job with the street level by integrating the promenade uses and creating a new promenade around Marina Beach that connects with the existing one. One of the goals of the Asset Management Strategy (AMS) is to integrate all of the promenades throughout the Marina. The EMC proposal effectively helps to achieve that goal. Mr. Moliere noted that the designs on display today show lots of open spaces and architectural interests. Overall, the EMC proposal met all of the criteria identified in the RFP in terms of both design revenue and interest.

Mr. Moliere said the Local Coastal Plan (LCP) identifies mixed-use as one of the kinds of uses that would be good for the Marina. All three proposals would require LCP amendments and the Department believes that the EMC proposal, because of its design, public features, promenade and observation deck, would gain approval when going through the regulatory process.

Commissioner Law asked the architect to provide an overview of the design proposal. The EMC proposer, Mr. Edward Czucker, introduced his Design Architect, Mr. David Van Oeyen and Project Counsel, Mr. Jeff Mitchell.

Mr. Van Oeyen said that that the project's goal is to make a mixed-rich use function work on the site and have pedestrian accessibility. He said there is as much retail planned as the particular area could absorb and a specialty market is proposed. The design has layer intensity. The lower rise residential unit running along Palawan Way is the scale of the adjoining apartment uses. Retail is at the lower level, apartments are at the upper levels and two levels of parking below. With Parcel 33, the intensity increases a bit. Along the promenade, there are a series of restaurants and shops. A point was made to continue the promenade and develop a galleria that runs across to Mother's Beach and connects back to the Marina City Club. He said the feature that is perhaps the most delightful for visitors is the eighth floor promenade area that will be a rooftop concourse, with trellis, for viewing the entire Marina. The building is mid-rise and its 75' height requires Coastal Commission approval.

Commissioner Law asked how the public would access the top floor of the complex. Mr. Oeyen responded that an elevator will take patrons to the restaurant and visitors to the rooftop.

Commissioner Law asked how the parking would be replaced and where would it be located. Mr. Oeyen responded that there would be two levels of subterranean parking. The 191 existing parking spaces would be replaced and additional spaces added to accommodate retail store customers.



Vice-Chairperson Stevens asked whether the project is on fill. Mr. Oeyen responded that it is partially on fill. She asked whether the facility would withstand two levels of parking. Mr. Oeyen responded "yes."

Vice-Chairperson Stevens asked what would happen to Marina Beach. Mr. Oeyen responded that there will be a good view of Marina Beach and the plan is to construct the promenade across Palawan Way to Marina Beach. The new complex will be on the northeast side of Marina Beach and not right on the beach per se.

Vice-Chairperson Stevens said she is concerned that Marina Beach visitors would have to pay to park in the new parking structure. Mr. Wisniewski responded that Marina Beach visitors currently pay to park in a County lot and the cost to use the new parking area will remain reasonable since rates are under County control.

Vice Chairperson Stevens asked whether there is a way to go to the eighth floor to enjoy the view without having to go to the restaurant. Mr. Oeyen said the eighth floor will be open to the public and is free of charge. Mr. Oeyen explained that the restaurant is actually one level below and visitors can take the elevator straight to the observation deck without going to the restaurant.

Mr. Wisniewski clarified that the new parking structure would serve Marina Beach visitors and adequate signage will be available to ensure that people know how to access the parking.

Chairman Searcy opened the floor to public comment on the EMC proposals for Parcels 33R and NR.

Mr. Donald Klein, president, Coalition to Save the Marina, said, "I've reviewed these projects that are going on here. Although this may be the Director's vision of what the Marina is going to be, it certainly is not a large percentage of the public's opinion of what the original concept of what this Marina was designed to be, so we're basically opposed to Item 5c. We're concerned with a number of things. One of them is the loss of grade level public parking because we already have a problem now where there's a parking problem that is unable to accommodate existing boater parking, so I don't know how that's gonna translate with these other projects. We're concerned with the density. Basically, what it looks like is a live-in Third Street Promenade here and I don't think that was the original concept for the Marina. As a matter of fact, I know it wasn't....We also have a concern with the fact that the Marina del Rey Local Coastal Plan Review has not been completed; has not even been started and may not happen until October of next year. We would be very concerned and would like to see, basically, ... an Environmental Impact Report on all of this density and traffic and so forth..."

Ms. Carla Andrus said, "I wrote a letter asking the Department what was the failed negotiations with the Marriott the first time. I didn't get a response to that. I think it would be interesting to know that since the Marriott was going to be there and they pulled out of those negotiations, the public is interested in knowing why. I mean, we sat down through this whole thing. We've been through this site before. We still don't have an LCP. We should wait until we do have one. It was clear at the last public meeting that the public was opposed very strongly to this whole idea of crowding in Mother's Beach...with all of this traffic, I mean it really interferes with access to the beach and it changes the whole thing completely. I would really like to know what happened to the Marriott because maybe we could learn some lessons from that."

Commissioner Law explained to Ms. Andrus that the Marriott, and hotel development in general, were impacted by the terrorist attacks on September 11. Tourism, air travel and the economy suffered and hotel occupancy fell dramatically, causing the Marriott to withdraw its development

plans. Mr. Wisniewski commented that, when the Marriott withdrew, a written explanation was given to the Commission and the public at the time.

Commissioner Law said he gathered from Mr. Van Oeyen's presentation that a variance would be needed for the planned 75' height. Mr. Moliere responded, "It's built into the LCP. There is an additional view corridor being provided that does allow for bonus height. So it's provided in the LCP. It would go slightly above, without view corridor number, by providing additional view corridor, the viewing platform and other public amenities. It fits within the bonus allowed under the LCP." Chairman Searcy clarified that the LCP provides specific language that allows for increased height and the EMC would seek approval to avail themselves of this allowance.

In reference to the Marriott, Mr. Moliere clarified that the proposals formerly received from the Marriott were from the Marriott Corporation, which has two divisions. One division builds hotels for its corporate account and the other division allows franchisees, which are private individuals who are expert in the hotel industry, to operate a Marriott. He explained that Marriott formerly withdrew from negotiations for a variety of reasons pertaining to its corporate structure; in fact, Marriott halted all building plans at that time.

-- **Invest West Financial Corporation Proposal for Parcel IR**

Mr. Moliere explained that the Investment West Financial Corporation (IWP) proposal is for a Marriott. The IWP is a private corporation and is the existing lessee of the Marina's Best Western Jamaica Bay Inn. IWP is a licensed franchisee for Marriott and proposes to build a 147 room Residence Inn by Marriott, which is a longer-term residence type hotel.

Mr. Moliere said that the LCP requires developers to preserve a view corridor from the Admiralty Way and Via Marina intersection. The proposer's bifurcated building designs present two buildings with a view corridor right between the two so that visitors to the Marina will see the ocean and heavily landscaped areas rather than a building front. He said the proposal provides for replacement parking. The RFP allowed for either replacing the public parking on site or relocating some of the parking to Parcel 21, which is on the other side of the beach. The Parcel 21 lessee is building a parking structure to accommodate the relocated parking.

Mr. Moliere said that the proposer for Parcel IR, Mr. Dale Marquis, is at today's meeting to answer the Commission's questions.

Commissioner Law asked the County's experience with the lessee in terms of the lessee's operation of the Jamaica Bay Inn (Parcel 27). Mr. Wisniewski responded that the lessee has been responsive to maintenance deficiencies. He said the Department was disappointed with the lessee's timeliness in responding to a lease extension proposal that the lessee submitted for Jamaica Bay Inn. The lessee had a proposal on the table pursuant to the previous RFP round that did not move as timely as it should have. Mr. Wisniewski said the lessee has taken steps to make negotiations on Parcel 27 current.

Chairman Searcy asked for more information relative to the lessee's maintenance of the hotel. Mr. Wisniewski responded that the lessee has been responsive to maintenance issues. When the lessee took over the leasehold without an extension, he invested money to upscale the hotel's appearance.

Commissioner Law said today is the first time he's heard of a parking structure on Parcel 21. Mr. Moliere explained that in the course of the Marriott proposal, provisions were made for Parcel OT, which is across the street, to be used for extra parking. During the course of negotiations, the lessee of Parcel 21 [and Parcel OT] expressed a willingness to provide parking so there wouldn't

have to be a traversing of the street for public parking. An arrangement was made as part of the Marriott proposal to provide a parking structure on Parcel 21 for any overflow or excess parking that was necessary for replacement. The Parcel 21 lessee is willing to continue this agreement and whichever of the proposers avail themselves of the parking spaces will have to pay a pro rata share for the spaces. Mr. Wisniewski said that the written agreement pertaining to this matter would be submitted to the Commission in the future.

Commissioner Law said he isn't delighted about the plan to put a parking structure on the water. He added that he understands the plans are preliminary, but before anything is finalized, Commissioner Law wants the Commission to have the chance to review the exact parking structure designs that are planned. Mr. Wisniewski said he shares Commissioner Law's concerns about the parking issue and clever architectural plans are needed to mitigate having the parking structure so close to the water.

Chairman Searcy opened the floor to public comment.

Ms. Andrus informed the Commission that there were people attending today's meeting who wanted to address the Commission during public comment, however, they had to leave because the meeting is taking so long. She asked whether anything could be done to accommodate members of the public who are under time constraints and would like to address the Commission. Chairman Searcy responded that the Commission must adhere to the agenda.

--- **Marina del Rey Promenade, LLL Proposal for Parcels 22R and GR**

Mr. Moliere said that drawings aren't displayed today for the third proposal, which is for Parcels 22R and GR, because as originally submitted, the proposal encompassed all three of the RFPs, for Parcels NR/33R, IR AND GR, plus Parcel 22. The Evaluation Committee liked many elements of the designs, however, the Committee did not want to put all of its eggs in one basket. As submitted, the proposal was not one the Committee thought it could recommend. The Committee did feel, however, that it could recommend the developer and his plan relating to Parcel 22 and the adjacent Parcel GR.

Mr. Moliere informed the Commission that Parcel 22 is the Foghorn Inn and contains the Cheesecake Factory. Some of the elements of the proposal included an expanded retail and restaurant presence, along with the adjacent Parcel GR, which was used for parking in the original plan. The Committee did not think Parcel GR was a good place for a parking structure and requested the proposer to redesign Parcels 22 and GR to include only visitor-serving elements. He said he believes the proposer is willing to comply with this request since the proposer expressed as much to the Committee.

Mr. Moliere said the Department is requesting Commission approval for specific negotiating authority to allow the Department to enter into negotiations and present the plans to the Commission once the project is more fully formed.

Vice-Chairperson Stevens said that the Marina boat shuttle would probably be in operation year-round by the time the proposed projects are built. Additionally, a pedestrian shuttle that moves from one side of the Marina to the other would also be available. She asked whether space would be allotted for the shuttles. Mr. Wisniewski responded that dock space is available for a water shuttle and any proposal that develops on Marina Beach requires the improvement of a waterfront promenade.

Vice-Chairperson Stevens said she would like to emphasize the need for a land-based shuttle system. Mr. Wisniewski responded that he agrees there is a need and the Department has been

in discussion with the Culver City bus system and the MTA. His first and highest priority is to increase water shuttle usage and he plans to promote the water shuttle's expansion as aggressively as possible. Mr. Wisniewski said that the land-based system is important, but he really wants people to get the water experience.

Commissioner Law commented that the Commission was given an eight-paragraph description of a design concept, but was not given a visual depiction of the design. Mr. Wisniewski informed him that the Department received design concepts, but they were inadequate and the lessee was requested to return to the drawing board.

Commissioner Law stressed the need to establish minimum standards before plans are submitted for Commission approval. He said he isn't opposed to the project, but needs to fully understand the project before voting on it and a written description of the design concept is insufficient. Mr. Wisniewski explained that the Department is requesting authorization from the Commission to enter negotiations. He said that since new well-defined projects are planned on both sides of Parcel 22 and Parcel GR, now is the time for the Department to negotiate with the lessee regarding Parcels 22 and GR as well.

Commissioner Law said he appreciates the Department's situation, however, the Department doesn't need Commission authority to negotiate with the developer. The Department can negotiate with the developer on its own authority anytime it chooses; what the Department is requesting from the Commission is the exclusive right to negotiate with the developer. Mr. Wisniewski said that if he was in the negotiator's shoes he wouldn't want to negotiate with the Department unless he knew the Department had license because of the expense involved in doing the architectural, etc.

Mr. Moliere explained that, while the Department could negotiate regarding Parcel 22, it couldn't regarding a parcel, such as Parcel GR, for which an RFP has to be issued. He said he chose not to bring the designs today because they would have been more misleading than helpful. The designs that were submitted to the Evaluation Committee were only for residential use, which the Evaluation Committee would not approve since it was looking for retail and visitor-serving use designs.

Mr. Wisniewski said that the Department cannot negotiate with someone on a County parcel without having gone through the legal RFP process. Parcel 22 and GR would be a project that is adjacent to Parcel 21, where the parking structure's design is currently in the fluid stage. The Department wants input from Parcel 21's neighbors and to engage them in the discussion in order to have uniform development around Marina Beach.

Vice-Chairperson Stevens said she believes the fitness center and Goldrich & Kest's new project should be included in the process. Mr. Wisniewski informed her that they are involved. He added that one of the beauties of obtaining negotiating authorization is it enables the Department to involve all of the parties that are developing in a particular area. If this isn't done, the plans might not be integrated properly.

Vice-Chairperson Stevens expressed her agreement with Commissioner Law about the need to see visual plans for proposed projects. Mr. Wisniewski said that the Commission would receive the visual plans after the projects have been fleshed out a little bit more during the regulatory process. Chairman Searcy requested that members receive a computer presentation of the design plans when staff is ready to present them to the Commission.

Chairman Searcy made a motion, seconded by Commissioner Crail, to recommend Board approval of the proposed developments on Parcels NR/33R, Parcel IR and Parcels GR/22R.

Before voting, Commissioner Law requested that the Commission vote on the three proposals separately. Chairman Searcy requested Deputy County Counsel Dave Michaelson's opinion on a separate vote for each proposal. Mr. Michaelson responded that there is no problem with the Commission voting on the proposals separately.

*Chairman Searcy amended his motion to recommend that the Board of Supervisors authorize the Chief Administrative Officer and Director of the Department of Beaches and Harbors to Enter into Exclusive Negotiations for Lease Options and Long-term Leases/Lease Extensions for Development Projects on Parcels NR/33R and Parcel IR. Commissioner Crail seconded the motion. The motion passed unanimously.*

*Chairman Searcy moved and Vice-Chairperson Stevens seconded a motion to recommend that the Board of Supervisors authorize the Chief Administrative Officer and Director of the Department of Beaches and Harbors to Enter into Exclusive Negotiations for Lease Options and Long-term Leases/Lease Extensions for Development Projects on Parcels 22R and GR. The motion passed with Chairman Searcy, Vice-Chairperson Stevens and Commissioner Crail voting in favor. Commissioner Law opposed.*

## **6. STAFF REPORT**

### **a. Ongoing Activities Report**

Chairman Searcy said that, in the interest of time, the Commission would receive and file the Ongoing Activities Report.

### **b. ADA Compliance Issue – Holiday Harbor Marina**

Mr. Moliere distributed copies of a letter sent by Holiday Harbor's lessee to the Department. He said that since the October meeting, the lessee has sought independent legal advice on the Americans with Disability Act (ADA) and Mr. Michaelson spoke with the lessee's counsel concerning the matter.

Mr. Michaelson informed the Commission that he had a substantive conversation with the lessee's attorney, who works with the law firm of Latham and Watkins. They discussed the issues involved, particularly Title III of the ADA, and the scope and reach of the federal law with respect to this particular lessee. Mr. Michaelson said that he and the attorney would continue to have a dialogue because at this point they don't have the same impression as to what the law provides.

Mr. Michaelson said the conversation with the attorney involved Title II of the ADA, which applies to local governments, and Title III, which applies to the private sector and would be applicable to the situation concerning Mr. Nicholls. He explained that Title III has a different structure than Title II and tends to be less broad and have less application than Title II would. Government facilities, such as the Chace Park Community Center, have to be accessible to everyone, and programs, activities and services that occur there must be accessible. If the community room was a private facility open to the public, it would fall under Title III regulations and different rules would apply. Mr. Michaelson said that in his conversation with the attorney, the attorney expressed disagreement about the applicability of Title III with respect to the lessee's property.

Mr. Michaelson also informed the Commission that the slip rented by Mr. Nicholls has a recreational commercial feature and he believes it is subject to Title III. The lessee's attorney doesn't necessarily agree and they will have to discuss the matter further. Mr. Michaelson said an area in which he and the attorney might have a meeting of the minds is that of the parcel's

parking facility and the path of travel to the rental office and the rental office itself. That clearly is, Mr. Michaelson believes, a part of the structure that is open to the public, not just the boat renters, and there needs to be accessible features in the path of travel, the parking lot, and the rental office.

Mr. Michaelson said the good news is that regardless of the legal discussion's outcome, the lessee appears to be receptive to making changes in the restroom, but it remains to be seen what the extent of these changes will be. The lessee will rely on its legal counsel's advice and what the lessee believes is appropriate for goodwill and meeting its renters' needs.

Commissioner Law said the lessee has a huge interest in the Marina and he encourages the lessee to not turn the matter into an ongoing legal dispute, which he isn't suggesting the lessee is doing, but Commissioner Law believes the lessee should just do what is right. Mr. Michaelson said that the lessee's lawyer seemed receptive to moving the matter forward regardless of the law's interpretation; however, it remains to be seen what actually will be done.

Chairman Searcy opened the floor to public comment.

Mr. Sherman Gardner, a representative of the Holiday Harbor lessee, informed the Commission of the lessee's efforts relative to the concerns raised by Mr. Nicholls at the September meeting. He said, "Mr. Wisniewski, as recently as the 27<sup>th</sup>, brought it to my attention for the first time when he told me what the issue was.... I went to our facility and I noted that there was a handicapped parking space that was just almost contiguous to the health club. That wasn't good enough for me. Where I'm coming from is, with anyone in this room it could happen to and we certainly are not insensitive to this kind of situation. We're not newcomers to the Marina. We've been around for a long time and we understand the situation. We were encouraged to talk to legal counsel and that's what I did. I went to the facility and I created a handicapped parking space right in front of the dock by his [Mr. Nicholls] slip. I further went through our file and I contacted Mr. Nicholls. I got him on the phone and he was very concerned as to how I received that phone number. I said to him, 'You know, just pick up the phone. Usually the way we operate, if you have a concern, just pick up the phone and I'm happy to talk to you about it. It's our style.' I told him that if he wanted to come by the close of business tonight, which was the 27<sup>th</sup> of August, there would be a handicapped parking stall right in front of his dock and if he had any other further concerns, here is the private line in my office and here is my fax number, call me. As we are standing here today, I've yet to hear from Mr. Nicholls."

Mr. Gardner continued, stating, "I heard what was said about the restrooms. Obviously, that's a very undignified situation. I don't want to be in that position. If there's a way for me to cure it without tearing that building down and, wisely as Mr. Michaelson said, if it's readily achievable, I'm going to do it...We did in fact move one of the stalls over and we have widened the area in which Mr. Nicholls is able to go into the restroom. That was done, perhaps, a couple of weeks ago. The interesting point I want to raise to you is that, evidently, Mr. Nicholls was here, or someone was here, who spoke to you on September 10. That's two weeks subsequent to the conversation I had with Mr. Nicholls. Nothing was mentioned in that document to the tune of a handicapped parking space, the willingness to cooperate, etc. Several months ago, three or four months ago, we did in fact provide a handicapped access ramp for Mr. Nicholls and our management told me that it was stolen on several occasions and they built an additional one. The item that Mr. Wisniewski brought to my attention about notes being left, well, we don't leave notes. We have a regular form used when someone is parking in the wrong spot. It's a standard form. I certainly apologize for anyone who left a note that adversely affected him....That is not the way we do business. My office has a call into Mr. Nicholls. I want to see if there's anything else we could further assist him with that again is readily achievable without tearing the property down."

In conclusion Mr. Gardner said, "I pointed out in my note that I sent, that we are in the process now of negotiating a new lease, which would involve the rehabilitation of the entire marina. The first note that was sent by Mr. Wisniewski's office, I didn't see it until a day or week later and that's the reason it took me a few days longer to respond."

Vice-Chairperson Stevens asked, since most of the bathrooms for the boaters, at least in the Dolphin complex, have stairs going down, how the property could be made ADA compliant. Mr. Gardner responded that the facility in question is Parcel 21, which is an older facility purchased approximately five years ago. The lessees are in the process of attempting to rehabilitate and refurbish it. It has two bathrooms now and one of the bathroom areas had its stall widened. He stressed that his office is available to discuss problems and is only a phone call away.

Commissioner Law expressed his appreciation for Mr. Gardner's comments and efforts to resolve the matter.

Ms. Andrus said, "About Dolphin Marina, Mr. Nicholls brought up the issue of the beveled walkway. Isn't that a brand new feature to the walking promenade?" She explained that, at the September Commission meeting, Mr. Nicholls mentioned the concern he had, as a disabled person, using the beveled walkways at Dolphin Marina.

Additionally, Ms. Andrus said, "You accommodate ADA ramps to get down to a boat, but you don't think about the restrooms at Dolphin, which Ms. Stevens indicated, have stairs. This was also indicated in Mr. Nicholls' testimony last time. The real issue, broader than that, is the promenade in itself. Mr. Ring, in February 2000, went in front of the Design Control Board about his promenade and he's also going to have the ADA access ramps to the boats, which eliminates a lot of slips as we all know. I brought it up at that meeting and asked about the beveled walkway."

Chairman Searcy clarified that Ms. Andrus is addressing the issue of material uses and surfaces, which is not necessarily completely within control of the developer or lessee, but rather is subject to or derives from the Department of Public Works and rules pertaining to ADA compliance, which require the use of a certain type of surface.

Mr. Michaelson said that Chairman Searcy is correct. The federal regulations are encapsulated in Americans with Disabilities Act Architectural Guidelines (ADAAG) and its California equivalent, California Building Code. It's very specific and detailed that, when dealing with new construction, certain surfaces are appropriate and certain surfaces are not. With new construction, the builder has to comply with the more stringent of the federal or state law and obtain a building permit, which necessitates a building official to confirm that the construction was done right.

Ms. Andrus said that if beveled walkways are used, there should be cutouts so that wheelchairs could easily access the area where the ramp is located. This should also be considered for restroom access.

Chairman Searcy encouraged Ms. Andrus to address the Design Control Board with her concerns and also review the information that was distributed by the representative who discussed ADA issues with the Commission at a previous meeting. He suggested that Ms. Andrus contact Mr. Moliere if she needs further assistance.

**b. Marina del Rey Convention and Visitors Bureau**

Chairman Searcy said that, due to time, the Convention and Visitors Bureau's Report is postponed until the November meeting.

**7. COMMUNICATIONS FROM THE PUBLIC**

Chairman Searcy opened the floor to public comment.

Ms. Pat Phillips said, "Only a certain amount of folks usually come during public comment and argue on behalf of us boaters. I know more than one reason why that occurs. It's intimidating, we're all scared. We're all insecure and have been for some time because of what's happening. I'm part of what the Marina was built for. I'm a liveaboard and a recreational sailor. I take women out with the Women's Sailing Association, voluntarily and free, to introduce them to the water. I have been doing this for years. I just received a rent increase. I'm at Panay Way, Holiday Harbor. They said it's for the sewer, water and trash removal starting November 1. What scared me, it [rent increase notice] said, 'We could arrange payments to cover these utilities.' I don't know what that means yet. My big question is, I've been told that all of these twelve years, I pay more than a non-liveaboard to cover utilities because I use more of them. I'm paying \$140.00 as a liveaboard over and above my rent. What I want to know is why? This is not just where I live, this is an issue for the whole Marina; to understand why we pay more because we use more utilities and now we have to pay, along with everyone else, money for the utilities."

Mr. Wisniewski requested that Ms. Phillips meet with Mr. Moliere after today's meeting to discuss the matter.

Mr. David Levine said, "I'm providing you with a letter. A couple of months ago the Commission asked if the Lessees Association would consider greater communication amongst boaters and the members of the Association, particularly in regard to relocation during time of redevelopment. We had a conversation at the Lessees Association meeting and I have a written response, which I will be delighted to distribute."

Chairman Searcy asked Mr. Levine to give a brief summary of his letter. Mr. Levine said, "The lessees are preparing to commence redevelopment and will communicate more fully the impending construction plans and timetables with all of the affected boaters, including liveaboard tenants. We'll do what we can to try and facilitate relocation efforts in those cases where the liveaboard boaters are tenants in good standing prior to relocation and where the boater maintains a vessel that complies with all of the appropriate County requirements and standards."

Chairman Searcy requested Mr. Levine to provide the Commission with a copy of his letter and Mr. Levine complied by distributing copies to the Commissioners and Department staff.

Ms. Andrus submitted a video to Mr. Moliere and said, "I promised you a video and this is a video on Mr. Moliere's investigation that will help you. It would be nice if you guys could find a way to see it all together. In front of the video is the testimony that I brought to you about the pricing market manipulation allegation, which you could fast forward through since you've already seen that. Because of my own budget concerns, when you guys are finished, I would like to have that back so that I can show it to the public. That's the reason that I made it. The day after I made those allegations, I told you that I have those specifics that you required. I thought, maybe you'd like to see those....Another member [of the public] came to talk on the same issue that Pat brought up. I also live in that marina. I'm interested in what's going on with that. I'm wondering about sewage, etc. That's a whole property thing. I know the Cheesecake Factory's there, the



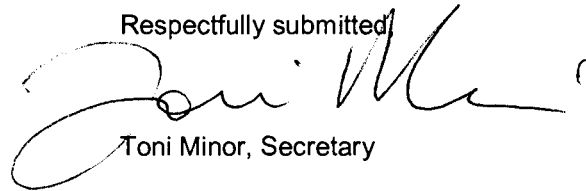
fitness center. Are the boaters going to be asked to subsidize this? How do they calibrate meters? What license do they have to do that? I have questions like that on that issue. I would hope that we could get that field trip started. Maybe we could put that on the agenda?"

Chairman Searcy said that one of the things he would discuss with Mr. Wisniewski is, perhaps, arranging for individual Commission members, rather than the entire body, to conduct site visits since the entire Commission's involvement at the same time would require adherence to the Brown Act's meeting rules, etc. Additionally, Chairman Searcy said the visits might be conducted on an unannounced basis.

8. **ADJOURNMENT**

Chairman Searcy adjourned the meeting at 12:25 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Toni Minor", is written over the typed name.

Toni Minor, Secretary

Small Craft Harbor Commission  
Meeting of November 12, 2003  
Minutes

**Commissioners Present:**

Harley Searcy, Chairman  
Carole Stevens, Vice-Chairperson  
Russ Lesser

**Excused Absences:**

Joe Crail  
John Law

Department of Beaches & Harbors: Kerry Gottlieb, Chief Deputy Director  
Roger Moliere, Deputy Director, Asset Management & Planning Bureau  
Joe Chesler, Chief, Planning Division  
Dusty Crane, Chief, Community & Marketing Services Division

Other County Departments: Tom Faughnan, County Counsel  
Sgt. Gary Thornton, Sheriff's Department  
Deputy Paul Carvalho, Sheriff's Department

Also Present: Beverly Moore, Executive Director, MdR Convention & Visitors Bureau  
Jeff Heintz, Munger, Tolles & Olson

**1. CALL TO ORDER & ACTION ON ABSENCES**

Chairman Searcy called the meeting of the Los Angeles County Small Craft Harbor Commission to order at 9:31 a.m. in the Burton W. Chace Park Community Room, Marina del Rey.

*Vice-Chairperson Stevens moved and Commissioner Lesser seconded a motion to excuse Commissioner Crail and Commissioner Law from today's meeting. The motion passed unanimously.*

**2. APPROVAL OF MINUTES**

There wasn't a quorum of Commissioners present today who attended the October 8, 2003 meeting; therefore, Chairman Searcy postponed action on the minutes to the December 10, 2003 meeting.

**3. REGULAR REPORTS**

**a. Marina Sheriff's Department Report**

**--- Crime Statistics**

Since Lt. Edmonds was absent from today's meeting, Sgt. Thornton informed the Commission that he would give any questions they have concerning the report's statistics to Captain Dacus.

Chairman Searcy requested Sgt. Thornton to identify the east end area. Sgt. Thornton responded that the Marina del Rey station is responsible for serving two specific areas: Marina del Rey and the east end, which includes Ladera Heights, View Park and Windsor Hills.

--- **Enforcement of Seaworthy & Liveaboard Sections of the Harbor Ordinance**

Deputy Paul Carvalho reported the one notable change in the report is that derelict vessels are being disposed of. He said the report identifies one boat as being disposed of, when, actually, six vessels have been disposed of to date and will be reflected in next month's report. Hopefully, by the end of the month, the majority of the vessels will be disposed of and the Sheriff's Department will proceed with enforcing the seaworthy part of the ordinance.

**b. Marina del Rey and Beach Special Events**

Chairman Searcy announced that Beaches and Harbors' Chief Deputy Director, Kerry Gottlieb, is attending today's meeting in Mr. Wisniewski's absence. Ms. Gottlieb informed the Commission that Mr. Wisniewski is absent because he is attending a meeting of the Board of Supervisors, which has on its agenda the Parcels 52R and GG item that the Commission recommended for approval last month.

Ms. Gottlieb introduced new County Counsel representative, Tom Faughnan, who is replacing Dave Michaelson as the Department's counsel on both beach and Marina-related items. She said that Mr. Michaelson is no longer employed with the County of Los Angeles and now works for the Los Angeles City Attorney's office. Mr. Faughnan previously worked as the Department's counsel on beach-related issues and assisted with the development of the Marina del Rey Convention and Visitors Bureau.

In reference to the MdR/Beach Special Events Report, Ms. Gottlieb encouraged the Commissioners and members of the public to attend the December 13th Holiday Boat Parade, which has the theme, "Through the Eyes of a Child." Supervisor Don Knabe is the parade's Grand Marshal and the Department will have a boat participating in the parade this year.

**4. OLD BUSINESS**

None.

**5. NEW BUSINESS**

**a. Appointment of a Member and Alternate to the Marina del Rey Convention and Visitor's Bureau Board of Directors for 2004**

*Chairman Searcy moved and Commissioner Lesser seconded a motion to reappoint Vice-Chairperson Stevens as a member of the MdR Convention and Visitor's Bureau Board of Directors for 2004. The motion passed unanimously.*

*Vice-Chairperson Stevens moved and Chairman Searcy seconded a motion to reappoint Commissioner Lesser as an alternate to the MdR Convention and Visitor's Bureau Board of Directors for 2004. The motion passed unanimously.*

**b. Amendment to and Assignment of Option to Amend Lease Agreements and Modification of Amended and Restated Lease Agreements, Parcels 12R (Deauville Marina) and 15U (Bar Harbor Marina) – Marina del Rey**

Ms. Gottlieb informed the Commission that she would defer her discussion of this item to lead staff member, Roger Moliere, and the Department's legal consultant, Jeff Heintz.

Mr. Moliere stated that since the Parcels 12 and 15U projects are nearing their construction start date, which may be no later than the first quarter of 2004, a number of administrative items need to be taken care of. All of the items, in terms of exercising the Option, need to be revisited to provide sufficient time in order for the Option to be exercised after all of the reconstitution of the financing, which has been delayed during this period. The Option Agreement before the Commission today extends the period to exercise the Option by 60 days, with an additional 60 days at the Director's discretion, to give sufficient time to exercise the Option after the financing has been cleared.

Mr. Moliere explained that the project was split into dual ownership in order to enable the financing. The Parcels 12R and 15U Amendment and Assignment allow for the two new entities, Esprit One and Esprit Two, to exercise the Option for Parcels 12R and 15U, respectively. Initially, the time-period, which was meant to be 39 years, was measured from execution date of the documents rather than from the true date of the leases. That's now been corrected to provide the full 39-year additional terms for each lease. Additionally, three provisions have been added to the lease that are quite beneficial. These are modernized provisions that are included in the new leases; however, when the Parcels 12 and 15 leases were originally negotiated, these provisions weren't on the horizon. One of the provisions is price control to assure that lessee services and facilities are provided to the public at fair market rates. There is also a provision for liquidated damages of \$100/day in the case of maintenance deficiencies. Lastly, there's a provision wherein the lessee will provide a water taxi station.

Chairman Searcy asked whether the \$100/day provision is per maintenance violation. Mr. Moliere responded that it is per violation per day.

Vice-Chairperson Stevens asked the names of the principal parties behind Esprit One and Esprit Two. Mr. Moliere responded that the owners are Doug Ring and Mike Sonderman.

Vice-Chairperson Stevens asked for details regarding the \$100 per maintenance deficiency provision. Mr. Moliere responded that the Department periodically develops a maintenance deficiency report, which identifies a parcel's maintenance deficiencies. The lessee is given an appropriate amount of time to correct the deficiency unless the deficiency is safety-related, in which case it must be immediately corrected. If time elapses for correction and the problem still isn't corrected, from that day onward, for each deficiency, there is a payment due the County of liquidated damages of \$100 per day until the deficiencies are corrected.

Vice-Chairperson Stevens asked whether there are current deficiencies in need of correction. Mr. Moliere responded there are not any deficiencies that haven't been corrected in a timely manner. In other words, those that are listed on the deficiency reports are either being worked on or have been corrected.

Ms. Gottlieb explained that the Department has been successful in securing the maintenance provision in current lease extensions. The Parcels 12 and 15U lease extension, however, was entered into between the County and the lessee in the year 2000 and at this time the provision was not a regular provision. Now that there is an opportunity to make amendments to the Parcels 12R and 15U lease, this maintenance provision is included and will be included in all other lease extension deals. This provision will give the maintenance inspection program more teeth and ensure the correction of deficiencies.

Chairman Searcy opened the floor to public comment.

Ms. Carla Andrus said, "I don't think that there should be any amendments or modifications on this lease because...it strips away the protections that the public has to make sure that they start

on time and complete on time. We've already been held up. As much as they like to suggest that this is all on James Sokalski's shoulders, I would dispute that...I'm sure that had something to do with it, that's a small case that Doug Ring probably could have wished away. If he was losing that much money all of this time, it's a case he certainly could have come to terms with and worked out. Just to remind everybody, that lawsuit was about including public participation in regards to what was going on in that marina..... The public has already opposed this project overwhelmingly and they have never gotten to say anything about this project. This project has been held up, not at just a great inconvenience to boating and recreational boating, but it has also began to affect the marketing of this Marina. You've shut down all of these boat slips and prices are increasing on docks that are dilapidated and in bad condition. There's no reason that we should make any further amendments or modifications to accommodate Mr. Ring and his financing. His financing is what got us in this trouble in the first place. Because he was unable to meet his mortgage way back when it was due, we started to create these wonderful lease extension ideas when really he should have been found in default of his lease. The lease should have reverted back to the County. We would have a bidding process and there would be new blood in this Marina. Why are we doing everything for Doug Ring? This doesn't benefit the public whatsoever. I hope you totally reject this idea of any amendments or modifications or any further consideration for Mr. Ring, who has really proven to be a slumlord in this Marina."

Mr. John Davis said, "I'm speaking on behalf of myself and on behalf of the Sierra Club. I'm the Chairman of the Marina del Rey Task Force. In regard to Item 5b, I will read the following letter I'm supplying six pages to this Commission for the administrative record to be transmitted to the Board of Supervisors."

He read the following:

Attached to this letter and incorporated by reference are letters to the Coastal Commission objecting to a request by the applicant to extend Coastal Development Permit 5-01-143 offering the same objections as objections to Item 5b. The letter submitted to you regarding Item 5b by Stan Wisniewski, Director of Los Angeles County Department of Beaches and Harbors is a false document in many respects. The Director further recommends that this Commission divest itself of its legal obligation to approve item 5b to County Counsel on page 1.

The most glaring false statement is located on page 12-15 BOARDLTR 11-04-03V6, middle paragraph, "Lessee has obtained all necessary regulatory approvals and is in process of finalizing complex financing arrangements to comply with the precondition to exercise option." This statement is false. Due to the fact that the California Coastal Commission is the regulatory body of the State of California and issues Coastal Development Permits in consistency with the California Coastal Act, the California Coastal Management Plan, the U.S. Coastal Zone Protection Act of 1972.

Coastal Development Permit 5-01-143 is expired. There are no regulatory entitlements now. They are expired. The applicant has reapplied, but they are expired. Therefore, this Commission cannot possibly approve an extension of an option that has such a patently false statement included. Therefore, the Director's claim is knowingly and undeniably false.

The Director further bases his request to this Commission to approve an Amendment and Assignment to Amend Lease Agreements and Restated Lease Agreements. The Director and his Board recommends that the County is exempt from the California Environmental Quality Act though California Public Resource

Code No.15-020, or section, shows the Director has once again made a false statement.

Then, on the same page, the Director recommends "liquidated damages for maintenance deficiencies and provisions for taxi docking area." Well, by this language, the Director is trying to exempt this applicant from County Policy Statement 25 regarding maintenance. This is in direct contradiction of County Policy Statement 25. Also, fair and reasonable price constraints are imposed on this project and this application is inconsistent with those regarding fair and reasonable pricing.

In response to Mr. Davis' comments, Ms. Gottlieb said it is true that the current lessee and the Department went to the Coastal Commission for an extension of the existing Coastal Development Permit. However, the permit is not currently expired, but it was believed that an extension might be needed because of the amount of time that was taken on the lawsuits.

Chairman Searcy asked whether the Coastal Commission granted the extension request. Ms. Gottlieb responded that the extension request hasn't yet been granted.

Chairman Searcy asked the expiration date of the permit. Ms. Gottlieb responded that there is an issue as to whether or not the permit expires. She explained that Mr. Ring filed for a permit just in case there was an interpretation that the permit would expire. Contrary to the Department's recommendation to approve the extension request on consent, the Coastal Commission set a hearing date for, Ms. Gottlieb believes, December 10. The hearing is in San Francisco and members of the public who aren't able to attend can send their written comments to the Coastal Commission.

For clarification purposes, Commissioner Lesser asked whether Mr. Davis incorrectly stated the permit had expired. Ms. Gottlieb responded, "yes." Commissioner Lesser asked whether Mr. Davis also incorrectly stated that the applicant is in default of his lease because he has violated Policy No. 25. Mr. Moliere responded that Mr. Davis incorrectly stated that the applicant is in violation. Mr. Moliere added that the project fully complies with environmental laws and went through all the required public hearings, including six Regional Planning Commission hearings, eleven Coastal Commission hearings and numerous Design Control Board hearings.

Vice-Chairman Stevens said, "I don't understand why, if the Esprit Corporation is still Doug Ring, it is necessary to grant him the Option." Chairman Searcy responded that the size of the overall renovation and reconstruction of the project necessitated, for financing purposes, the split of Marina Two Holding Partnership into Esprit One and Esprit Two. Ms. Gottlieb explained that the Commission and Board of Supervisors have already approved the Assignment of the Parcel 12R and 15U leases to Esprit One and Esprit Two. The document before the Commission today is the Option to Amend the Lease Agreement to the two new entities, Esprit One and Esprit Two.

Commissioner Lesser clarified that the Parcels 12R and 15U Option to Amend Lease Agreement being voted on today doesn't change the project or affect construction. The project, after receiving approval from several regulatory bodies, was delayed because of a lawsuit. An extension of the Option's expiration date is necessary because of the time that was taken to address the lawsuit. This extended time gives the County the opportunity to add certain provisions to the lease that benefit the County.

*Commissioner Lesser moved and Chairman Searcy seconded a motion to recommend to the Board of Supervisors approval of the Amendment to and Assignment of Option to Amend Lease Agreements and Modification of Amended and Restated Lease Agreements, Parcels 12R*

*(Deauville Marina) and 15U (Bar Harbor Marina) – Marina del Rey. The motion passed unanimously.*

**c. Assignment of Leasehold Interest – Parcel 125R (Marina City Club) – Marina del Rey, from Marina City Club, LP to Essex Portfolio, LP**

Ms. Gottlieb informed the Commission that this item is an Assignment from the existing lessee, Jerry Snyder, to a new entity, Essex Portfolio, LP (Essex). She said the Marina City Club has a number of condominiums and apartments. Mr. Snyder is the lessee for the apartments and the condo's common areas and he is assigning his interest to Essex.

Ms. Gottlieb explained that, generally, it is the Department's policy when doing Assignments, to review the financial conditions of the proposed assignee, as well as the price being paid, and whether the leasehold's management would still be within the County's interests. In the case of Essex, all of the County's requirements are satisfied. Essex is a well-financed company, the sale price is reasonable, and the property's management would be taken over by an experienced multi-family housing management company.

Chairman Searcy asked to what extent Mr. Snyder would continue his involvement with the property. Mr. Moliere responded that there would be a full sale of all of Mr. Snyder's interests to Essex and Essex will completely replace Mr. Snyder. He said that Essex is a publicly traded, New York Stock Exchange listed, real estate investment trust. The company is incorporated in Maryland, but operates primarily in Palo Alto, CA and is a Western United States operation. Essex has several hundred California apartments and is principally involved with multi-family complexes. The company is very experienced, very well capitalized and has top notch banking relationships.

Vice-Chairperson Stevens said, "Given the tremendous number of problems we've had with the condos that are privately owned and, I understand the ones also that Mr. Snyder retained on the promenade, where I had two friends move in and move out because there was no heat, there was no air, there was nothing. The building, as we all know and have discussed over many months, is still in desperate need of repair. Is Essex prepared to do this, because Jerry Snyder certainly wasn't?" Mr. Moliere responded that the current lessee and the new lessee have no direct connection with the condos. The condos are individually owned.

Vice-Chairperson Stevens clarified that her question pertained to Essex's responsibility for maintenance of the condo's common areas, such as the tennis courts and garage. Mr. Moliere responded that the condominium and common areas are subject to a separate negotiation going on right now with the Homeowners Association and only indirectly with Mr. Snyder and now, Essex. There is a coming probable deal in the works that would address these issues, but it is not the direct responsibility of either Mr. Snyder or Essex. The lessee's responsibility, according to the written lease, extends only to the frontal common areas, the docks (which the lessee has agreed to replace), the apartments and certain of the other common areas.

Vice-Chairperson Stevens commented that she knows at least two condominium owners whose water pipes burst and ruined their furniture and rugs. She said the homeowners do have some responsibility; however, the pipes throughout the building are the lessee's responsibility. Ms. Gottlieb said that the individual condo owners would feel the pipes are the lessee's responsibility, but, in fact, pursuant to various agreements that were entered into at the time that bankruptcy occurred years ago, it became a condition of the Homeowners Association to take care of the various deficiencies. This issue has been the subject of a number of years of discussion and now there are ongoing negotiations to try to attend to deferred maintenance deficiencies.

Chairman Searcy asked with whom the homeowners are negotiating since the lessee is not responsible for maintenance deficiencies. Ms. Gottlieb responded that the homeowners are negotiating with the County for some relief from shadow rent increases and, in fact, deferral of shadow rent increases. She said the County has been setting aside the increased shadow rent so that homeowners could use it for needed capital improvements.

Chairman Searcy asked the amount of funds accrued from the shadow rent. Mr. Moliere responded there is approximately \$2 million. If the deal comes to fruition, approximately \$4.5 million will be provided as an advance to the homeowners, which they will pay back with interest in the form of increased participation fees as condos are sold.

Chairman Searcy opened the floor to public comment.

Mr. David Naftalin said, "I'm here on behalf of the Marina Tenants Association.... I was fascinated by the discussion that just took place because my review of the proposal was based only on the facts that were contained in the letter from the Department urging the Board of Supervisors to approve this transfer. It's shocking to me that the County would let the Homeowners Association flounder like this. The information contained in this recommendation letter and made available to the public is shockingly inadequate. There's no information about what the seller is receiving as an allocation to condos. Apparently nothing for condos, but as an allocation, how many units he's selling. It just says that the lease contains this many units and includes this, but it doesn't say what the money is going for. If the \$28 million were \$30 million and the improvements were only worth \$28 million, then you say, 'well what's the other \$2 million for?' Well, what's the \$28 million for? The County has a policy on approving transfers and it includes Item B here on the first page of the recommendation letter, 'The price to be paid for the leasehold as it relates to the improvements or potential development thereon.' Now, absolutely no information is provided about the relationship between the proceeds to the seller and the value of the improvements. There's no way that I, or anybody else from the public, can analyze this. I can't believe that the Commission has only received this information and that the Board of Supervisors would be asked to make an approval based on this three page letter. It contains virtually nothing."

Mr. Naftalin continued, "I'm going to follow up, with your kind permission, with a letter setting forth my questions. It has to do with what exactly is being transferred? How are the \$28 million proceeds being allocated? What methodology has the County employed to relate the proceeds to the improvements? You see, the seller can't just take and say, 'hey, it's such a great deal doing business with the County, they roll over. You can get all you want.' Then say, 'I want \$100 million for my lease,' and the County says, 'Well, it's a bona fide deal.' That's what it says in the letter, 'It's a bona fide financial arrangement.'....We kinda have to know that there's some relationship between the value of the improvements, which is all the lessee owns, and the sales proceeds. I would like to know what that relationship is and what methodology is being used. Also, since there are admitted deficiencies in the present maintenance, because obviously there's deficiencies in the slip maintenance, as in Exhibit B, the list, the promise to improve the slips, well, insofar as that promise to improve the slips now is a deficiency that should have been cured by the present owner, that cost has to be added to the proceeds too. If, in fact, this is something that the present lessee should have done and then he gets \$28 million and he gets covered for his deficiencies, that's something he's receiving too. He's walking away free and clear and washing his hands of the problems with the Homeowners Association."

In conclusion, Mr. Naftalin said, "There's a general point I'd like to make. Each one of these lease approvals, transfer approvals, is an opportunity to take back the Marina. In 2000, I noticed in the discussion on Item 5b, Ms. Gottlieb was saying 'we put in some new provisions, in 2000 we got some better provisions in the lease that relate to our right to negotiate on the deficiencies, the maintenance deficiencies.' The County is very deferential at the very least. This is the one



opportunity when we don't have to be so deferential. When the County can step out and say, 'no, I'm not gonna approve this. We're not gonna approve a transfer until we get....' I don't know why the strength of the buyer is so important. Do we really want more strong buyers? Have they contributed to the Board of Supervisors? There ought to be a conflict assessment to see whether some of the Board ought to recuse themselves on this issue. I don't see how this proposal can be recommended on this record."

Vice-Chairperson Stevens expressed her opinion that action on the Marina City Club Assignment should be deferred until the Commission receives answers to questions regarding the maintenance that's being loaded onto the Homeowners Association and the lack of commitment on the part of Mr. Snyder in performing general maintenance, such as to the pipes and in the garage. She questioned whether Essex would fix these problems. Ms. Gottlieb responded that Mr. Snyder is not responsible for the repair of the pipes and the garage and it will not be the responsibility of Essex. The Homeowners Association is responsible for correcting the deferred maintenance. The County is in negotiations with the Homeowners Association to try to assist the owners with meeting their obligations to cover the deficiencies.

Ms. Gottlieb emphasized that the item before the Commission today is not a lease extension deal when additional things could be extracted from the lessee. The item before the Commission today is an Assignment of the lessee's interest to another entity. Ms. Gottlieb said that under the existing lease the County is not able to unreasonably withhold its approval of the transfer.

Commissioner Lesser recounted his experience with a property transfer when he was a member of the Manhattan Beach City Council. The Radisson, now Marriott Hotel, was on city land. It had a long-term 99-year lease that allowed for a transfer and the City Council had the right to not approve it; however, approval could not be unreasonably withheld. Commissioner Lesser expressed his disagreement with Mr. Naftalin's comments questioning whether the County needs a strong buyer. Commissioner Lesser said a strong financial position is important and the County should want a lessee who could afford to take over a \$28 million lease. As far as the price is concerned, Commissioner Lesser expressed his opinion that the Commission does not have the right to get involved with this matter; after all, the deal is between a willing buyer and a willing seller and the asset isn't being changed. He said that in the case of the Manhattan Beach Radisson Hotel, it was sold for \$85 million and the city received a nice transfer fee.

Ms. Gottlieb stated that, when looking at the price, the County makes sure the property isn't loaded with so much debt that it won't take care of itself and that the County's underlying land interest is protected. She added that it's not just the improvements on the land, but the number of years that the lease is in existence, that weighs in on whether or not the Department believes the price adequately protects the County's underlying land interests.

Chairman Searcy requested Mr. Lon Snyder, Jerry Snyder's son, to come to the podium to address some of the questions concerning the Marina City Club.

Mr. Snyder said, "The Marina City Club consists of 600 condos, 101 apartments and approximately 300 boat slips. The Marina City Club LP, what you call Jerry Snyder, is the master lessee and is ultimately responsible for everything that happens on the property. Out of the 1994 bankruptcy, came a management arm called the Management Council. What was happening was that the 600 homeowners were obligated to pay monthly their share of the maintenance fees but had zero say in how the property was managed. So, out of the 1994 bankruptcy settlement came a management arm consisting of five persons: two people from the elected homeowners board, two Snyder reps and an independent member."

Mr. Snyder continued, "You [Vice-Chairperson Stevens] mentioned that the promenade didn't have any heat. People have moved in and moved out. The first part of this year, we replaced the heating system and the building is currently being painted. Improvements are being made to the promenade. With regards to pipes breaking in the condos and tennis courts needing to be fixed, the Management Council, the joint board of the homeowners and the association, is aware of these problems and is hoping that the ground rent negotiation deal with the County will be approved and will give us the funds to fix all of these problems. It is also aware that if the ground rent deal fails, there will be a special assessment of multimillion dollars to fix all of those problems. The County has been very nice to give the master lessee time to try to work all of these problems out. The County has the ultimate hammer. You guys could put the master lessee into default, make us fix it, and we would have to go special assess. We still have that right. Essex will step into our shoes. The entire interest is being sold. To address the question of is it a fair price, the master lease is being sold to Essex, so Essex will step into our shoes. The condo owners are sub leaseholders. That doesn't change. The relationship doesn't change. The promenade apartments, boat slips and various retail areas have an annual net operating income of roughly \$2 million to one. A six percent cap, generally what apartments sell for, works out to \$33 million. The purchase price is \$28 million. That differential of \$5 million gives you the money to fix up the boat slips."

Vice-Chairperson Stevens asked whether the assessment Mr. Snyder mentioned would be against the homeowners or against the lessee and the homeowners. Mr. Snyder responded, "If the ground rent deal fails and there's a \$6 million special assessment, to the extent that the improvements are not part of the shared common area, which are the driveways, pool, club, courts, everything that's basically between the apartments and the boat slips, the things that are shared are paid by both the condo association and the master lessee. The items that are part of the towers only are paid exclusively by the 600 condominium sub leaseholders."

Vice-Chairperson Stevens said she noticed when reading the Argonaut that condos are frequently put up for lease rather than for sale. She asked who is responsible for a leased condo. Mr. Snyder responded that the condominium sub leaseholder is responsible for any charges against his/her condo irrespective of whether he/she rents the unit to someone.

In response to Mr. Naftalin's comments, Mr. Moliere said that with the Marina City Club transaction, the Department asked for the purchase agreement, the operating statement for the last five years and Essex's operating plan. As for maintenance deficiencies on the Marina City Club's promenade, Mr. Moliere said that deficiencies are being corrected in the portion of the Marina City Club that Mr. Snyder is selling. Also, according to the deal that was made, the new buyer agreed to replace the docks within 3-5 years.

Mr. Donald Klein, president of the Coalition to Save the Marina, said, "I'm glad to see the County is doing all their assessments on all of this financial stuff. I just wondered whether Mr. Snyder or Mr. Robert Nehu, who originally funded the Marina City Club, was informed, or whether the County has ever informed the people involved with this lease, that the property that they're sitting on was the site of two abandoned oil refineries, one abandoned oil well, a former sewage treatment plant and a city trash dump, all in that specific area. Believe me, this is no new information because it was presented to this Commission August 17, 2002 and was brought up before the California Coastal Commission at their meeting in San Luis Obispo in December of last year, I believe December 11, if I'm not mistaken. My feeling is that it doesn't exactly smell like a bed of roses when you drive around the Marina City Club. It sure smells like a lot of hydrogen sulfide gas...I realize Mr. Chesler has made a statement, something about all this was taken care of, everything was capped, so forth and so on. However, no empirical data or documents have ever been shown to show that those statements were made...also there's a requirement by the

County, 110.3 and 110.4, which requires a state licensed engineer to make an assessment of toxic substances, and things of this nature, of this area, which has never been done."

Mr. Davis said, "I incorporate my comments and the Sierra Club's comments, numbered 1-9 on Item 5b of today's agenda, as opposition to this transaction as well. The Club concurs with the statements made by Don Klein of the Coalition to Save the Marina, so there is no further reason to restate these extreme public safety issues except to also include the fact that this is in a seismic hazard zone. I could not believe that the County Counsel laughed nervously in the discussion of these very important public safety issues. This is a serious matter. It is certainly not a laughing matter. The grand jury of the County of Los Angeles, in its review of Marina del Rey in 1982, concurred with the statements from County Counsel to Jack Salyers, Chairman of the grand jury at that time, that you cannot have 60-year leases. You call them condos. These are leases, 60-year leases, called condo leases. They're apartments, they're not condos. They're not privately owned, number one. Number two, the County disregarded the advice of the grand jury and County Counsel itself and two or three years later, giving 60-year leases and calling them condo leases. Mr. Moliere and Stan Wisniewski and County Counsel are disregarding Policy Statement 25 regarding maintenance standards in Marina del Rey that are here for public safety matters. I submitted that document to this Commission. It was one page. It's simple. It said that safety deficiencies are cured immediately and other deficiencies are to be cured within one month. The fact is that County Counsel has advised that it is not the case. This Commission is concurring and Beaches and Harbors is not adhering to Policy Statement 25 and the lessee is in default of its lease. Now, to prove that this lessee is in default of its lease and that the County of Los Angeles Department of Beaches and Harbors fails to enforce Policy Statement 25, read Item #2 on page B-10 [of the Leasehold Premise Maintenance Repair Deficiency Report attached to the Marina City Club Board Letter]."

Mr. Davis referred to the Department's Maintenance Repair Deficiency Report and read aloud one of the Marina City Club promenade's deficiencies. Mr. Davis said, "He [Mr. Moliere] states the ongoing repair processes are suitable to the Department of Beaches and Harbors. I would like him to answer how many maintenance crews it takes and how long to paint a pole."

In conclusion, Mr. Davis said, "Marina del Rey is categorically excluded from the coastal zone and the County Counsel's document stating that the ownership of Marina del Rey and stating that federal jurisdiction only regards the main channel is based upon a false document, which is the deed of 1958 whereby the County of Los Angeles was to transfer all lands, easements and rights of ways necessary to construct a harbor in the United States. The deed says it's in conformance with House Document 389, which shows attachment 1 as the true boundaries of Marina del Rey, but the geographic description contradicts the first written text and the deed, therefore, that is a false document that the County is using to assert that there are no federal easements over the Marina del Rey. This will be discussed at the Coastal Commission and in the eventual review of the LCP."

Vice-Chairperson Stevens stated that she's disturbed by the fact that, for as long as she can remember, the Homeowners Association and its differing membership have discussed with the County and Mr. Snyder how to handle the issues discussed today. She expressed her feeling that nothing will ever be resolved. Ms. Gottlieb said the Department is hopeful that is not the case and staff has committed to the Board to make a good faith effort to reach an agreement. She said the issue is a complex one. There are 600 homeowners and a substantial amount of deferred maintenance, which costs a lot of money. After the bankruptcy there were some responsibilities directed to the Management Council. It's a very complicated matter, it's gonna cost a lot of money, a lot of people have to agree to it, and the County has to remain in a good position for itself. Ms. Gottlieb said the Department is very hopeful that current negotiations will

be successful and is working toward that goal so that the condo owners and the County will be satisfied.

Commissioner Lesser mentioned that as a condo owner he could relate to the problems and complexities involved with maintenance issues; however, he fails to see what these issues have to do with the lease Assignment before the Commissioners today. He said that the Marina City Club Assignment involves the proposed buyer and the proposed seller of the existing leasehold. The leasehold is not really going to change in any way by the transfer; the only way it would change is with the commitment to fix the boat slips earlier, which is positive. The price seems to be reasonable and the buyer has the requisite experience. Commissioner Lesser said the only decision the Commission is required to make today is whether or not there is a reason to withhold the transfer and he doesn't see a reason to withhold the transfer since the County would benefit from it.

*Commissioner Lesser moved and Chairman Searcy seconded a motion to recommend Board approval of the Assignment of Leasehold Interest – Parcel 125R (Marina City Club) – Marina del Rey, from Marina City Club, LP to Essex Portfolio, LP. The motion passed unanimously.*

## **6. STAFF REPORT**

### **a. Ongoing Activities Report**

Ms. Gottlieb reported that the Board of Supervisors approved the one-year extension of the Marina del Rey Convention and Visitors Bureau Agreement. The Board also approved the Assignment of leases for Parcels 12R (Deauville Marina) and 15U (Bar Harbor Marina) to Esprit One and Esprit Two. Additionally, the Board authorized the Department to enter into exclusive negotiations for lease extensions with three projects surrounding Marina Beach. These projects were discussed in detail at the October meeting.

Ms. Gottlieb informed the Commission that the Board also approved contracts for appraisal services. She concluded the report by stating that the Design Control Board minutes were included in the Commissioners' meeting packets.

Chairman Searcy opened the floor to public comment.

Mr. Klein said, "I have a question on paragraph two [of the Ongoing Activities Report] concerning Parcel 12R, Deauville, and 15U, Bar Harbor. Partially, Commissioner Stevens touched on some of the things that I wanted to know. This Esprit One LLC and Esprit Two LLC, I have not seen a corporation statement of domestic stock on this and I'm kinda curious as to who the real directors and officers are in these corporations and I don't know what the percentages are, whether or not this is a new corporation or what....I don't know. I'm kinda curious, perhaps, Mr. Moliere could straighten me out on that."

Mr. Moliere responded that Esprit One and Esprit Two are limited liability corporations and are on file with the state. He said that members of the public could obtain documents identifying the officers, etc., from the state. Also, the material distributed at the October Commission meeting included the information that Mr. Klein is requesting. Mr. Moliere suggested that Mr. Klein contact him to arrange to receive the material.

Ms. Andrus said, "I don't see how we can make any decisions on any of these things without a public hearing. The public hasn't been invited to tap their input on these things. I would like to know when is the next public night meeting so that the public will have opportunity to understand what's going on in the Marina?"

Chairman Searcy asked Ms. Andrus to which agenda items she was referring when stating that decisions were made without a public hearing. Ms. Andrus responded, "There were no night meetings so that the public in this Marina will have a chance to understand what's going on... There's been several public hearings, just as we've been through this whole regulatory process all along. We've never been taken seriously. That's unfortunate because the public does have a lot to say that would benefit these developers. You know, sometimes you're gonna get what you wish for. With Mr. Ring for example, you know, you went ahead and passed this thing, but he's gonna be facing the Design Control Board just on issues of ADA compliance in his marina. That's gonna hold up his project and in the meantime it holds up the public."

Chairman Searcy expressed his confusion as to exactly what Ms. Andrus is concerned about. He explained that he understood Ms. Andrus to be concerned that there isn't a public hearing process, yet at the same time she appears to be expressing her concern that Mr. Ring's projects will be held up during the public hearing process. Ms. Andrus informed him that she is concerned that Mr. Ring's projects were approved during the public hearing process even though Mr. Ring didn't address unresolved issues, such as ADA compliance, which means he might need to go before the Design Control Board again regarding the matter.

Relative to public input, Ms. Gottlieb said that staff submits to the Board all of the items recommended by the Commission for approval. The public has an opportunity to attend Board meetings and/or send their comments to the Board regarding these items. The County's website identifies Board agenda items and the dates on which they will be heard. The public could also obtain copies of Board agendas by contacting the Executive Office of the Board of Supervisors.

In response to Ms. Andrus concerns about the Commission's approval of the Parcels 12R and 15U Amendment and Assignments, Commissioner Lesser commented that the Commission did not take any action today that would change the design of the Parcel 12 and 15 project in any way; therefore, the project doesn't need to return to the Design Control Board for review. He also expressed his certainty that the completed project would not have ADA deficiencies.

**b. Marina del Rey Convention and Visitors Bureau**

Commissioner Lesser commended Ms. Moore, Executive Director, MdR Convention and Visitors Bureau, for her excellent 2004 Annual Plan. He said the Plan is extremely interesting, informative and professionally prepared. Ms. Moore thanked Commissioner Lesser and said that Vice-Chairperson Stevens and Commissioner Lesser received advance copies of the Plan because of their Board membership. Copies of the Plan will be available to the public on Friday, November 14 at the Convention and Visitors Bureau, which is located at 4701 Admiralty Way.

Ms. Moore thanked the Commission for endorsing the extended Agreement between the County and the Convention and Visitors Bureau and expressed her appreciation for the Commissioners' support.

Ms. Moore reported there is now over 100 decorated, circular disks on the waterfront walk area parallel to Admiralty Way. These disks help to demarcate, for the very first time, the waterfront walk area and encourage the public to circulate between the restaurants and other businesses along the waterfront. She thanked the Department's staff members for their work on this project.

Ms. Moore said that the Visitors Bureau hosted a group of travel agents from Japan who were visiting the Marina last month. She said that Japanese travel to the United States is just beginning to make a comeback after almost 10 years in recession and briefing travel planners on

existing, new and proposed tourism services helps to place the Marina in a good position as the tourism market begins to reemerge in Los Angeles.

She continued her report, informing the Commission that the Bureau also hosted 10 California based travel writers this past month on a tour of the Marina. Every step of the tour was supported by local businesses to help house, feed and entertain the guests. The writers spent three days in the Marina and their activities included bicycling along the bike path, taking a boat tour and walking around the community. The writers particularly enjoyed their water experience. They were not only given a tour of the Marina's visitor's section, but also its residential sections. She said that the writers were impressed by the active role the County is taking to improve the Marina and staff is hopeful that they will write positive stories about their experiences.

## **7. COMMUNICATION FROM THE PUBLIC**

Before receiving communication from the public, Chairman Searcy requested Ms. Gottlieb to schedule the January or February 2004 Commission meeting in the evening.

Vice-Chairperson Stevens commented that there was much public comment at the last evening meeting; however, the Commission and Department staff did not answer the public's questions. She encouraged the Commission and staff to try to address the questions posed by the public at the next evening meeting.

Chairman Searcy said that staff did respond to some of the questions posed at the last evening meeting; however, many questions went unanswered. He said the next evening meeting should be thorough and provide as much information about upcoming developments as possible, including the status of construction and information about traffic mitigation.

Chairman Searcy requested staff to submit to the Commission a draft agenda for the next evening meeting so that members will have an opportunity to review the agenda and provide input before staff finalizes it.

Ms. Gottlieb responded that staff would comply with Chairman Searcy's request. Additionally, if the public wants information on development in the Marina, it is available on the Department's website, which is <http://beaches.co.la.ca.us>. There are plans to also include information about construction activity in the future.

Mr. Donald Klein asked whether there is a public member of the Commission. He clarified that, by public member, he means a member of the Commission that is put forward by a public group of people. Ms. Gottlieb responded that the Board of Supervisors, which is composed of elected officials, appoints the Small Craft Harbor Commissioners.

Mr. Klein said, "I'd like to have set for the agenda for the next meeting the detailed report and documents on the oil field and gas problems. The data was never shown. It was a letter by Mr. Chesler that said that this has all been done, but nothing was ever produced. I've seen no empirical data and no documents."

Mr. Chesler informed the Commission that Mr. Klein is incorrect in characterizing that staff didn't respond or provide data. The Department asked the Department of Public Works (DPW), which employs the County's engineers and geologists, to write an opinion letter, which was included in the meeting material made available to the public at a Commission meeting approximately one year ago. He said the opinion letter essentially confirmed that "all due diligence has been followed with respect to eventual reuse of the land that had formerly been subject to hazardous material activity. Public Works, essentially, as the experts, as the engineers and geologists for

the County, confirmed that proper procedures had been followed and, in consultation with the State Department of Oil and Gas, which has ultimate jurisdiction over the reuse of these properties, all proper and legal means have been taken to essentially correct the ills of the past and move forward with redevelopment. That particular record is in your minutes and I would be happy to ensure that Mr. Klein gets that again if it's helpful."

Chairman Searcy requested Mr. Chesler to review DPW's documentation to verify that it contains the information Mr. Klein requests. If the material doesn't contain the needed information, Chairman Searcy requested Mr. Chesler to obtain it and send it to Mr. Klein.

Mr. Klein said, "It's not sufficient having a phone call from Public Works saying they did this or did that. There's no empirical proof that such actual assessment has taken place. It's required by County law, I believe its 110.3 and 110.4, that before any construction takes place in a former hazardous area or oil refinery type of situation, there has to be a state certified engineer that has to make a report. I want to see the report."

Chairman Searcy explained to Mr. Klein, "The steps that you're referring to, as required by the requisite laws, statutes, regulations, etc., have been complied with. The documentation of that, which you indicated you have not seen, received, and don't know where it is, I've instructed staff to get that information, to identify where it is so that you can see the empirical data, so that you can see the geotechnical engineer. You want to look at his license number and know who he was, that he did it and review his report, we are trying to get that information to you, specifically. Once you get that information and you see, 'hey this guy did this report and he's been dead for 12 years,' we would love to know about that."

Mr. Klein reiterated that he wants to see the data and asked would the issue be agendized. Chairman Searcy informed him that the issue would not be agendized. Mr. Klein expressed his concern that the issue would be forgotten if it isn't agendized. Chairman Searcy told him the matter would not be forgotten and he requested Mr. Klein to inform him at the next meeting if staff doesn't follow up with the information Mr. Klein is requesting.

Mr. Klein asked what steps the County is taking relative to the Local Coastal Plan (LCP) review. He asked whether the issue could be agendized. Chairman Searcy informed him that the issue would not be agendized. He said that, if it's merely information Mr. Klein is requesting, staff could provide it.

Ms. Gottlieb said, relative to the LCP, the Department gave material to the California Coastal Commission (CCC) in a timely fashion, as requested. The CCC indicated that it would be unable to meet its obligation to review the LCP within the timeframe that it told the court. Apparently, the CCC lacks the resources to meet the court date. She said the Department is at a loss as to what the Coastal Commission intends to do or can do since its budget was cut and it has insufficient staff. There is nothing else for the County to do with respect to the review but await the CCC's actions.

Chairman Searcy asked whether, during this state of limbo, there is opportunity for the public to submit information to the CCC relative to the LCP. Ms. Gottlieb responded that the public could certainly provide information during this time. Even though the LCP is stalled, what has occurred on an ongoing basis is that the Coastal Commission continues to consider Marina del Rey development projects on a case-by-case basis.

Mr. Fred Newman said, "I'm referring to the Argonaut on October 16, which says that the Small Craft panel has OK'd negotiations for three new projects in the Marina and they have pictures of it. Most of them enclose Mother's Beach, but the most important one that I refer to is on Palawan

Way, which is Parcel NR, which is behind the Harbor House Restaurant at Admiralty and Palawan Ways. I happen to live at the end of that on Palawan and I wonder now, when it's hard to get on Admiralty because of congestion, how you're going to put in apartments plus retail and restaurant space? How the heck does the panel figure that people who live at the end of Palawan Way are going to be able to live a good life with all these people closing in on them?"

Ms. Gottlieb responded that all the projects before the Commission come in a proprietary fashion. The County is currently negotiating with the recommended Marina Beach proposer on the economic deal points. Any project that goes through the process of obtaining a lease proceeds to the regulatory side, which is when all the traffic mitigation issues and other zoning and planning obligations are considered. The Regional Planning Commission, the DCB and other regulatory agencies will hear the projects and the public will have an opportunity to contribute input.

Chairman Searcy asked whether the Department includes on its website the Marina del Rey projects that are being heard by regulatory agencies. [At this point, Mr. Wisniewski arrived at the meeting.] Mr. Wisniewski responded that a list of the Marina projects scheduled for regulatory hearings, including hearing dates, is available at the Visitors Center, public library and the Department's Administration building. This list is also available on the Department's website.

Mr. Chesler commented that Mr. Newman's name is included on the list of people to receive notification of public hearings for development projects.

Mr. Newman asked what the Commission was thinking when it approved the proposed projects on Palawan Way. Ms. Gottlieb responded that the Commission did not approve a particular project, but rather, a recommendation for the Department to enter into exclusive negotiations.

Mr. John Davis stated, "I am speaking on my own behalf so that the local media has no question who I am speaking on behalf of. I am speaking on my own behalf. I would like to help demystify the LCP process very briefly. I submitted a request for necessary action to the National Oceanic Atmospheric Administration (NOAA) regarding their periodic review of the CCC. They agreed and issued a necessary action requiring the CCC to review all LCPs within the legal timeframe. NOAA also advised the CCC that, if the state does not find the money, the federal government would reach in and find it for them. Also, regarding Mr. Chesler's assertions regarding the Department of Public Works' documents, the correct agency is located within the Department of Regional Planning. It is the Watershed Section and the Environmental Section, especially the Legacy Pollutant Section. That is whom we should be hearing from. Those are where the documents should be. Also, the geologist for the County of Los Angeles, in reviewing geotechnical reports for several of the permits that were issued in Marina del Rey, fails to notify this Commission that these projects are located in a seismic hazard zone as proved by the state geologist of the state of California. I have two points in closing. I would like to ask two simple questions to this Commission. First of all, I submitted Policy Statement 25 regarding maintenance standards to this Commission. I believe it was two pages, in August. It contradicts exactly what County Counsel and Beaches and Harbors states regarding maintenance procedures. I ask this Commission, did you read Policy Statement 25 yourselves? I submitted it in the hearings of last summer. Did any of the Commissioners read Policy Statement 25 regarding maintenance enforcement in Marina del Rey?"

Chairman Searcy responded that the Commissioners read the material that was provided to them, including Policy Statement 25.

Mr. Davis asked whether Commission members read the most recent grand jury report regarding Marina del Rey. Chairman Searcy responded that he hasn't read the grand jury report.



Mr. Davis said, "County Counsel stated that a particular Coastal Development Permit had not expired in a direct question from Russ Lesser. I will supply the Chairman, and any other Commissioners that request it, a letter from the CCC I received stating that the permit had expired. And I would remind County Counsel that Counsel could be disbarred by providing false and misleading information at a public forum."

Ms. Gottlieb, Chief Deputy Director at the Department of Beaches and Harbors, informed the Commission that it was she, rather than Tom Faughnan, who said the permit had not expired.

Commissioner Lesser expressed his wish to see the letter indicating that Mr. Ring's Coastal Development Permit had expired. Mr. Davis requested Commissioner Lesser to give him his [business] card so that he could fax the letter to him. Mr. Davis also said he would request the CCC to send a copy to Commissioner Lesser.

Ms. Carla Andrus stated, "I wanted to first thank you for the night meeting. I hope that the Convention Center would be able to help us promote that meeting, a really nice promotion in the area to let people know that it is going to happen."

Ms. Andrus read a letter regarding market manipulation:

I just wanted to give you an update I have of the market manipulation in the Marina, on the subject of slip pricing. I hope you got to see the video I provided you at the last meeting that highlighted some very specific situations. I want to focus on one in particular, that's a bulkhead slip at Tahiti Marina. The tenant there was renting a bulkhead slip for three boats at \$75.00 a month for a period of several years. When just recently he was told he could not keep all his boats there, he would have to rent three bulkhead slips effectively raising his rents from \$75.00 to \$225.00.

Mr. Moliere and Mr. Wong have been investigating this situation. I had some obvious questions for their investigation. Number one: because it is illegal to rent these slips, I asked if the lessee had been paying its percentage due to the County or was this money being charged under the table. Number two: If these slips aren't supposed to be rented and their books show that they are receiving revenue, why isn't the County enforcing its policy?

Then you have different marinas charging different rates even within their own marinas and if you don't like it, you can move on. That's the policy of these marinas with their pricing. Since this one tenant's complaint of over charging got back to the dockmaster at Tahiti Marina, one of his boats has been towed to the Sheriff's Department. Dale, the dockmaster at the Bay Club, has let his tenants make use of the bulkhead slips at no charge. The only consistent policy has been is that if you don't like it you can move on. So, the boaters have been extorted. I told Mr. Wong that I believe the boaters should get their money back from these illegal charges. The lessee should not profit from this sort of business in the Marina. The refund of these monies should be in full and if the lessees want to recover the percentage they gave to the County, that's on them.

My understanding is that the law in place is first to protect the seawall, a seawall that came at great expense to the taxpayers. Another concern is that in the event of some catastrophe, a small boat of 20' or more, any boat with a cabin might have someone on board putting his life in danger, therefore, opening the County up to liability. It's a reasonable law except it doesn't seem to be of any

real consequence to the smaller size boats, dinghies, day sailers and workboats. At any rate, the marinas are being asked to have all boats removed from the bulkhead slips now, which does not benefit the public whatsoever, which is a ridiculous thing to do. We can make all these amendments and modifications for Doug Ring, but when it comes to helping the public in a situation like this, we need those bulkhead slips and if we don't have them, then they're going to have to find some remedy. Putting those boats at the back of the vessels is not a remedy. It creates a navigational problem and, another thing, that shows, illustrates very well the market manipulation in this Marina. Those boats have to be included in a true market study, they have to be. They're vibrant to the Marina and it's necessary and it's a real hurtful thing the County has done asking the operators to have all of these boats removed.

Mr. Richard Horner said, "I am a boater and member of the South Coast Corinthian Club. I am here to speak on two issues. Issue #1 is the former bike patrol that the Sheriff used to have, which I thought was a wonderful thing. I am sorry to see that there is not enough funding for that anymore. The Corinthian Club was robbed twice within a ten-day period. The contributing factor, I believe, was that there is no more bike patrol because both times the robbery occurred between the hours of early morning and mid-morning."

Commissioner Lesser asked whether robberies or burglaries occurred. Mr. Horner informed him that burglaries occurred.

Mr. Horner continued, "We are doing measures, such as installing a safe and doing some measures. The first time they broke through the sliding glass door. The second time they climbed up the side by taking all kinds of chairs and things and stacking them and went up to, what was, a second story through our windows... We never thought that was an issue because we never thought anyone could get up there. They did not get much; they caused more vandalism than they did... My comment is that there are a lot of things going on in the Marina, there's a lot of revenue being raised, a lot of construction permits. I think that this Commission can find the funding somehow to reinstate the bike patrol. I think it was a good thing, not just for the boaters, but for the public and tourists as well. I had, about two months ago, I bought a life raft safety device. It's carried in, like a little nap sack. It's a man overboard device. Sometimes I go to my boat everyday and I go to the Corinthian Club events and sometimes I might not be in my boat for a month. So, my diver found one and he charged me for it and I paid him. He said, 'I'll put it in your boat' and he put it in my boat and it was stolen. I don't know between what period. I think it was about a twenty-day period I wasn't at my boat, so I didn't even bother to report it. I believe that also was a contributing factor, that it may not have happened if we had a bike patrol. So, I am here to say that I would like to explore measures to see that happening again, the bike patrol."

Chairman Searcy informed Mr. Horner that the County of Los Angeles, certainly the Commission, the Department of Beaches and Harbors, and the Sheriff's Department, would welcome Mr. Horner's efforts, and that of his friends and club members, in a letter writing campaign to help try to restore funds for the bike patrol. Mr. Horner suggested that, perhaps, lessees could also contribute funding for a bicycle patrol.

Mr. Horner continued, "The second thing I want to talk about is bathroom facilities here for the boaters. In the 'G' basin, below our Corinthian Club, I don't know how, but every van aboard and all kinds of people who live in their vans that are not boaters, and I think possibly have no business being in the Marina, and lots of homeless people and people who don't have boats that don't live here and are not part of any club. The amount of traffic in the bathroom is shocking to see. Quite frankly, there are some people, boaters as well as club members, that have said, 'I

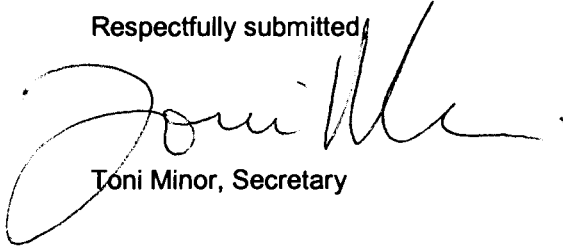
don't allow my children and I won't go into those bathrooms because they are dangerous.' I want to know what avenue there is, without retaliation, to pressure...Pacific Ocean Management...how do I approach them to maintain and manage the bathroom facilities that they say they have no funds for and don't have enough money to change the locks? They will not have any kind of security and I have actually had on two occasions, in the last year and a half, confrontation with people who said, 'This is a public facility let me in' and I said, 'Well, quite frankly, I can't do that.' It's been confrontation. So, what do I do about that? I am speaking on behalf of several members."

Mr. Wisniewski informed Mr. Horner that staff would gladly talk to Mr. Horner at the end of today's meeting about the issue. Mr. Wisniewski said, perhaps, there's some discussion that staff could have with the lessee to encourage the lessee to improve security.

8. **ADJOURNMENT**

Chairman Searcy adjourned the meeting at 11:32 a.m.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Toni Minor", is written over the typed name. The signature is fluid and cursive.

Toni Minor, Secretary

# LOS ANGELES COUNTY SHERIFF'S DEPARTMENT



## MARINA DEL REY STATION

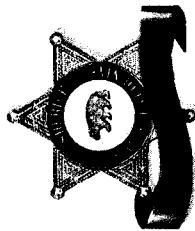
### PART I CRIMES- NOVEMBER 2003



| Part I Crimes             | MARINA AREA<br>(RD'S 2760-<br>2763) | EAST END<br>(RD'S 2764-<br>2768) |
|---------------------------|-------------------------------------|----------------------------------|
| Homicide                  | 0                                   | 0                                |
| Rape                      | 0                                   | 0                                |
| Robbery: Weapon           | 0                                   | 3                                |
| Robbery: Strong-Arm       | 0                                   | 2                                |
| Aggravated Assault        | 2                                   | 4                                |
| Burglary: Residence       | 0                                   | 9                                |
| Burglary: Other Structure | 3                                   | 6                                |
| Grand Theft               | 10                                  | 4                                |
| Grand Theft Auto          | 2                                   | 13                               |
| Arson                     | 0                                   | 0                                |
| Boat Theft                | 0                                   | 0                                |
| Vehicle Burglary          | 3                                   | 3                                |
| Boat Burglary             | 2                                   | 0                                |
| Petty Theft               | 7                                   | 7                                |
| Total                     | 29                                  | 51                               |

**Note-** The above numbers may change due to late reports and adjustments to previously reported crimes.

**Source-** LARCIS, **Date Prepared** – December 1, 2003  
**CRIME INFORMATION REPORT - OPTION B**



**LOS ANGELES COUNTY SHERIFF'S DEPARTMENT  
MARINA DEL REY STATION  
PART I CRIMES- NOVEMBER 2003**



|                                  | West<br>Marina<br>2760 | East<br>Marina<br>2761 | Lost<br>R.D.<br>2762 | Marina<br>Water<br>2763 | Upper<br>Ladera<br>2764 | County<br>Area<br>2765 | Lower<br>Ladera<br>2766 | Windsor<br>Hills<br>2767 | View<br>Park<br>2768 | TOTALS |
|----------------------------------|------------------------|------------------------|----------------------|-------------------------|-------------------------|------------------------|-------------------------|--------------------------|----------------------|--------|
| Homicide                         |                        |                        |                      |                         |                         |                        |                         |                          |                      | 0      |
| Rape                             |                        |                        |                      |                         |                         |                        |                         |                          |                      | 0      |
| Robbery: Weapon                  |                        |                        |                      |                         |                         |                        | 3                       |                          |                      | 3      |
| Robbery: Strong-Arm              |                        |                        |                      |                         |                         |                        |                         | 1                        | 1                    | 2      |
| Aggravated Assault               | 1                      |                        |                      | 1                       |                         |                        | 1                       | 1                        | 2                    | 6      |
| Burglary: Residence              |                        |                        |                      |                         | 1                       |                        | 3                       | 3                        | 2                    | 9      |
| Burglary: Other Structure        | 2                      | 1                      |                      |                         | 1                       | 1                      |                         | 2                        | 2                    | 9      |
| Grand Theft                      | 7                      | 1                      | 1                    | 1                       | 1                       |                        | 1                       |                          | 2                    | 14     |
| Grand Theft Auto                 | 2                      |                        |                      |                         | 1                       | 1                      | 3                       | 6                        | 2                    | 15     |
| Arson                            |                        |                        |                      |                         |                         |                        |                         |                          |                      | 0      |
| Boat Theft                       |                        |                        |                      |                         |                         |                        |                         |                          |                      | 0      |
| Vehicle Burglary                 | 2                      | 1                      |                      |                         | 2                       |                        |                         |                          | 1                    | 6      |
| Boat Burglary                    |                        |                        |                      | 2                       |                         |                        |                         |                          |                      | 2      |
| Petty Theft                      | 3                      | 3                      | 1                    |                         | 2                       | 1                      | 1                       | 3                        |                      | 14     |
| REPORTING<br>DISTRICTS<br>TOTALS | 17                     | 6                      | 2                    | 4                       | 8                       | 3                      | 12                      | 17                       | 11                   | 80     |

**Note-** The above numbers may change due to late reports and adjustments to previously reported crimes.

**Source-** LARCIS, Date Prepared – December 1, 2003  
CRIME INFORMATION REPORT - OPTION B

# **MARINA DEL REY HARBOR ORDINANCE SEAWORTHY & LIVEABOARD COMPLIANCE REPORT**

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|                                      | <b>October</b> | <b>November</b> |
|--------------------------------------|----------------|-----------------|
| <b>Liveaboard Permits Issued</b>     | 1              | 3               |
| <b>Warnings Issued (Yellow Tags)</b> | 0              | 0               |
| <b>Notices to Comply Issued</b>      | 0              | 0               |

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**Total Reported Liveaboards By Lessees - 541**

**Total Liveaboard Permits Issued - 432**

**Percentage of Compliance - 79**

No new Warnings were issued in the month of November.


No new Notices to Comply were issued in the month of November. There are no active cases.

No new citations were issued for violations of 19.12.1110 L.A.C.C. (liveaboard permit) or 19.12.1060 L.A.C.C. (unseaworthy vessel) in the month of November.

## **Number Of Unseaworthy Vessels Demolished**

To date, one hundred and fifty three (153) vessels have been removed from the marina for disposal. Currently, five (5) vessels are ready for disposal and ten (10) are awaiting lien sale procedures.

December 4, 2003

TO: Small Craft Harbor Commission  
FROM: Stan Wisniewski, Director   
SUBJECT: **MARINA DEL REY AND BEACH SPECIAL EVENTS**

**MARINA DEL REY EVENTS**

**41<sup>st</sup> ANNUAL HOLIDAY BOAT PARADE**

Saturday, December 13

6:00 p.m. – 8:00 p.m. with Fireworks Show at 5:55 p.m.

Sponsored by the Holiday Boat Parade, the Los Angeles County Department of Beaches and Harbors, The Marina del Rey Convention & Visitors Bureau, Marina City Club, The Argonaut Newspaper, Southwest Airlines, Playa Vista, Edward Jones Investments, Hornblower Cruises & Events, Daniel Freeman Marina Hospital, Wells Fargo Bank, Takeout Taxi, Living Air, Northwest Airlines, PNR Travel, The Parking Spot, Vitality Health Center and Wilson Creek Winery Vineyards.

Marina del Rey's 41<sup>st</sup> Annual Holiday Boat Parade will light up the Marina on Saturday, December 13 with a fireworks display off the Marina breakwater as brilliantly lit and decorated vessels circle the Main Channel. Parade theme for the 2003 Holiday Boat Parade is "*Through the Eyes of a Child.*" Grand Marshal for this year's parade will be Supervisor Don Knabe, Fourth District, who is Chairman of the Los Angeles County Board of Supervisors.

Boat owners will compete for numerous prize packages with the "*Best Overall*" winning a 2-night trip for two to Fort Lauderdale, Florida for the Winterfest Boat Parade touted as the "World's Most Watched Boat Parade."

Best spots for viewing the boat parade are Burton Chace Park, located at 13650 Mindanao Way and Fisherman's Village on Fiji Way where spectators can see and hear the parade free of charge. The Holiday Boat Parade can also be viewed from the deck of the Lady Washington 1-800-200-LADY (\$40 adult, \$10 child). Parking is available in County lots throughout the Marina.

For event information call: The Holiday Boat Parade at (310) 670-7130 or visit their website at [www.mdrboatparade.org](http://www.mdrboatparade.org)

### **TALL SHIPS AT FISHERMAN'S VILLAGE**

December 11<sup>th</sup> – 26<sup>th</sup>

Lady Washington will arrive in Marina del Rey at 2:00 p.m. on Thursday, December 11th. There will be free tours from 3:00 p.m. – 6:00 p.m. (December 11th only). On weekdays, there will be history programs for 4th and 5th grade students (by reservation, \$5 dockside, \$30 sailing). Public Dockside tours will be available on weekdays (\$7 family, \$3 adult, \$2 students and seniors, \$1 children under 12 years) from 4:00 p.m. to 5:00 p.m. (except Dec. 24, 25, 26). Tours will also be available on Saturdays from 10:00 a.m. to 1:00 p.m. Join the Lady Washington for an interactive Adventure Sail Training on Sunday, December 21<sup>st</sup>, 10:00 a.m. – 1:00 p.m. and 2:00 p.m. – 5:00 p.m. (\$40 adult, \$20 child).

Friday, December 26th, the Hawaiian Chieftain joins the Lady Washington for a battle re-enactment sail (\$45 adult, \$25 child).

For event information and reservations call: Lady Washington at 1 (800) 200-LADY or visit their website at <http://ladywashington.linsect.com/>

### **MARINA DEL REY GREETES THE NEW YEAR WITH FIREWORKS SPECTACULAR**

Wednesday, December 31

Sponsored by the Department of Beaches and Harbors  
and presented by Zambelli Fireworks Internationale

On New Year's Eve, a brilliant display of fireworks will light up the skies over Marina del Rey. The fireworks will continue into the opening minutes of 2004, beginning at the 30-second countdown to midnight.

The fireworks can be viewed throughout Marina del Rey. The best locations for viewing them are Fisherman's Village on Fiji Way and Burton Chace Park, at 13650 Mindanao Way. Parking is available in County lots throughout the Marina.

For event information call: Marina del Rey Visitor Center at (310) 305-9545



**FISHERMAN'S VILLAGE WEEKEND CONCERTS**

Sponsored by Pacific Ocean Management, LLC

All concerts from 1:00 p.m. – 4:00 p.m.

**Saturday, December 13**

Phyllis Chang, playing Jazz, Pop & Adult Contemporary (1:00 p.m. - 4:00 p.m.)

Visit Santa's House, Building D (1:00 p.m. - 5:00 p.m.)

Live DJ/Emcee (5:00 p.m. - 8:00 p.m.)

**Sunday, December 14**

The Gregg Wright Band, playing Jazz

**Saturday, December 20**

Hammersmith, playing Jazz

**Sunday, December 21**

Floyd & the Fly Boys, playing Blues

**Saturday, December 27**

Jasmine, performing R&B, Funk and Pop

**Sunday, December 28**

Kid & Nic Show, performing Jazz & Swing

For recorded information call: (310) 823-5411.

**BEACH EVENTS**

**THE CITY OF MANHATTAN BEACH**

**HOLIDAY FIREWORKS FESTIVAL**

Sponsored by Manhattan Beach

Sunday, December 14

5:00 p.m. – 6:30 p.m. with Firework Show at 6:30 p.m.

The City of Manhattan Beach will have a Holiday Fireworks Festival with two performances with a public sing-a-long you do not want to miss, plus a special visit from Santa Claus on his float on Sunday, December 14 located on the Pier. In addition, Manhattan Beach is also sponsoring a Toy and Canned Food Drive, so please bring something with you.

**The Hyperion Outfall Serenaders**

5:00 p.m. – 5:30 p.m.

**John Brown Band**

A public sing-a-long

5:30 p.m. – 6:30 p.m.

For more information call: City of Manhattan Beach at (310) 802-5403

**VENICE PENGUIN SWIM CLUB ANNUAL SWIM**

Thursday, January 1, 2004

11:00 a.m.

The famous club goes into the ocean for its 44th annual “chilly” wintertime swim at Venice Beach.

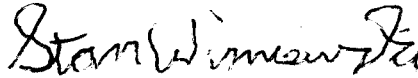
For event information call: The Venice Penguin Swim Club at (310) 390-5700 or visit their website at [www.swim.net/scaq/](http://www.swim.net/scaq/)

SW:mc

December 4, 2003

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director



SUBJECT: **JOINT RECOMMENDATION OF THE CHIEF ADMINISTRATIVE OFFICER AND DIRECTOR OF BEACHES AND HARBORS TO APPROVE AND AUTHORIZE EXECUTION OF LIMITED FORBEARANCE AGREEMENT TO FACILITATE AMENDMENT OF AMENDED AND RESTATED LEASE – PARCEL 125R (MARINA CITY CLUB) – MARINA DEL REY**

Item 5A on your agenda relates a proposed Limited Forbearance Agreement (Agreement) that would authorize a temporary deferral of the scheduled January 1, 2004 increase in “shadow rent” for the condominium units in Parcel 125R (Marina City Club), to facilitate the completion of a lease amendment that will address proposed infrastructure and capital improvement matters relating to the condominium portions of the leasehold.

The text of the proposed Agreement is not yet available. However, the attached Board letter provides details regarding all proposed provisions and we will file the Board letter only at such time as County Counsel has approved the text of the amendment. We will also return this item for your Commission’s consideration if there is any material variance from the terms described in the attached Board letter.

Your Commission’s endorsement of my recommendation to the Board of Supervisors as contained in the attached letter is requested.

SW:rm

Attachment

December 1, 2003

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**JOINT RECOMMENDATION OF THE CHIEF ADMINISTRATIVE OFFICER AND  
DIRECTOR OF THE DEPARTMENT OF BEACHES AND HARBORS TO APPROVE  
AND AUTHORIZE EXECUTION OF LIMITED FOREBEARANCE AGREEMENT TO  
FACILITATE AMENDMENT TO AMENDED AND RESTATED LEASE – PARCEL 125R  
(MARINA CITY CLUB) – MARINA DEL REY  
(4th DISTRICT)  
(3 VOTES)**

**IT IS JOINTLY RECOMMENDED THAT YOUR BOARD:**

1. Find that the proposed Limited Forbearance Agreement for Parcel 125R is categorically exempt under the California Environmental Quality Act pursuant to Class 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.
2. Approve and authorize the Chairman of the Board to sign three copies of the Limited Forbearance Agreement (Agreement) for Parcel 125R, temporarily delaying implementation of scheduled rent increases to specified future dates.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The proposed Agreement is intended to provide a delay period during which negotiations can continue toward addressing infrastructure and capital improvement concerns relating to leasehold improvements on Parcel 125R in Marina del Rey, and are a continuation of a policy adopted by your Board in January 1999, wherein the Department was instructed to

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December 1, 2003  
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establish a deferred revenue account to deposit certain incremental rent increases from the leasehold pending possible agreement that would address those concerns. The Agreement provides for a limited rent increase deferral (not a waiver), and if final agreement is not reached and approved, the County will be made whole, with interest, for any deferred increased rental amounts. The Parcel 125R project element that is addressed is the leasehold condominium portion of the project and its 600 individual condominium subleases. The negotiations hinge, in part, upon the need for a temporary rent freeze and, thus, a deferral of the January 1, 2004 rent increase is required in order to provide sufficient time to assemble the numerous consents and amendments to individual condominium and condominium loan and other documents and preserve the elements of the proposed final agreement, should such final agreement be considered and approved by your Board. An overview of the proposed final agreement is included in the "Facts and Provisions/Legal Requirements" section later herein.

County and Marina City Club, L.P. (Lessee) are parties to that certain Second Amended and Restated Lease (Lease) dated October 27, 1987 that allowed establishment of a condominium plan and assignment of subleased condominium interests in the 600 high-rise units (Condominium Units) constructed on the leasehold. The leasehold also contains 101 low-rise apartment units, a promenade and certain common area facilities. Pursuant to the Lease, the Condominium Units were assigned to Marina City Condominiums, a California limited partnership, and subsequently individually assigned, on a condominium-by-condominium basis, to individual condominium sublessees (Condominium Sublessees), together with the undivided leasehold interest in the common areas and appurtenant rights applicable to each Condominium Unit.

While the parties to the Lease are the County and Lessee, and the parcel contains both apartments and 600 Condominium Units, the Lessee (in the case of the condominiums) acts essentially as a pass-through for the payment of the County's monthly "shadow rent" by the individual Condominium Sublessees. "Shadow rent" is an amount meant to approximate the rent the County would have received had the condominiums remained rental apartments. This device was designed as a quid-pro-quo for the County's consent to allow condominium sales of a sublease interest in the Condominium Units. The individual

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Condominium Sublessees have a possessory interest in the Condominium Units purchased and may sell their interest to others, however at the end of the lease term (2067), full title and use rights to all of the Condominium Units as well as all rights to common areas and all appurtenant rights will revert to the County. The amount of shadow rent was set at the date of the condominium conversion and now is adjusted annually in accordance with an index, reflecting changes in Westside Los Angeles residential prices and the Consumer Price Index (CPI). The County also receives a percentage of gross sale proceeds (Administrative Transfer Fee) as each Condominium Unit is "sold" (assigned) throughout the term of the Lease.

While the County looks to the Lessee for maintenance of the three condominium towers and associated common areas as a legal matter pursuant to the terms of the Lease, the primary financial burden of funding both the maintenance and any needed structural repairs falls to the individual Condominium Sublessees. In response to the Condominium Sublessees' requests for certain adjustments in shadow rent and aid in correcting building structural and infrastructure deficiencies, your Board directed that all amounts representing annual increases in shadow rent starting January 1, 1999 be held in a separate account pending consideration of the Condominium Sublessees' requests. Pursuant to negotiation between the County and the Condominium Sublessees, a plan to accomplish the expressed needs of the Condominium Sublessees and preserve the County's lease revenue benefits has been developed. Certain elements of the proposed plan (Plan) will call for a temporary "freeze" on increases in shadow rent, and utilization of the amounts of shadow rent increases accumulated pursuant to your Board's direction since January 1, 1999 (which will further accumulate during the proposed temporary freeze period) for repairs to specified leasehold infrastructure and other capital improvement items. Amounts so utilized under the Plan will be repaid, with interest, by the Condominium Sublessees over time from an increase in the Administrative Transfer Fee for each Condominium Unit and from further increases (if necessary) in shadow rent percentage in later years should the increased Administrative Transfer Fee amounts prove insufficient to fully amortize the amounts, with interest, advanced to the Condominium Sublessees and to recover the rent loss due to the temporary freeze on increased shadow rent.

The Honorable Board of Supervisors

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The proposed Plan, including the detailed assumptions utilized to project repayment, interest and other financial terms, is based upon the temporary freeze of further shadow rent increases becoming effective January 1, 2004. However, the Plan requires that a number of preconditions be satisfied by the Lessee and Condominium Sublessees, including amendments, consents and other documentation that must be executed by each Condominium Unit sublessee, each sublessee Condominium Unit lender, and a lease amendment and consent executed by the Lessee and its lender, as well as consideration of the Plan and the aforementioned documentation by your Board, all of which will require additional time to complete. In order to preserve the benefits of the proposed Plan and to effectuate its provisions should it be eventually approved by your Board, we propose to delay implementation of the shadow rent increase scheduled to take effect January 1, 2004. The attached Agreement provides that the County will delay implementation of the scheduled January 1, 2004 shadow rent increase until September 30, 2004, on condition that, if the Plan does not become effective on or before June 30, 2004, any amounts that would otherwise be payable to County in the form of increased Administrative Transfer Fees due to Condominium Unit transfers that take place between June 30, 2004 and September 30, 2004 be paid to the County upon the effective date of the Agreement (all of the preconditions, including the aforementioned amendments, consents and other documentation having been completed and your Board's approval of a Lease amendment embodying the Plan having been obtained). If the Plan is not approved on or prior to September 30, 2004, the shadow rent increase scheduled for January 1, 2004 will be retroactively implemented and sums due, with interest, become immediately due and payable. Additionally, any Condominium Sublessee who does not join in the Plan on or before the above referenced dates will also be retroactively assessed with the increased shadow rent amounts and such amounts, with interest, will become immediately due and payable, with interest, by the Lessee who will enforce the payment against any such Condominium Sublessee through its sublease and enforcement deed rights.

#### Implementation of Strategic Plan Goals

In furtherance of County Goal #4, "Fiscal Responsibility," the recommended action will allow the Department to implement that portion of its Strategic Plan that enhances strategic

The Honorable Board of Supervisors  
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partnerships with existing and prospective lessees toward preservation of County assets by facilitating repairs and replacement of infrastructure and capital improvements in leasehold property that will eventually revert to County ownership. This recommendation is also consistent with the County's Strategic Plan Goal of Service Excellence, in that while maintaining appropriate protection of County interests, it allows for and facilitates the preservation of improvements on the leasehold through arrangements with the Lessee.

#### **FISCAL IMPACT/FINANCING**

Fiscal impact is limited to the delay in collection of certain portions of County rent for the leasehold, all of which is to be repaid, with interest, in the event the proposed Plan is not effectuated or repaid over the course of the lease term, with interest, if the proposed Plan is approved, the Plan being designed to be revenue neutral to the County.

#### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

Proposed Plan Overview:

The proposed Plan that is intended to be implemented upon final documentation and agreement between the County and Lessee pursuant to a lease amendment will contain the following elements:

- County will extend a "freeze" on future increases in shadow rent for three years, beginning January 1, 2004 for all "Category A" Condominium Units (as discussed further below). Starting January 1, 2007, annual fixed increases in shadow rent of 3.75% will be implemented in lieu of the regular rent adjustment index now provided in the Lease.
- County will continue to accumulate shadow rent increases over 1998 base level during the three-year "freeze" period at the 2003 shadow rent rate.
- County will allow utilization of accumulated funds for reimbursement of certain



defined capital improvements.

- Repayment of advanced funds will come from increased County participation on sale proceeds.
- If advances are not fully repaid, with interest, by 2022, then cash repayment is required, such repayment being secured by a first deed of trust on all Condominium Units.
- If, by 2019, it appears that extra County revenue from increased sale proceeds will not fully reimburse County for the present value of the loss due to the 3-year freeze of increased shadow rent, a "lookback" provision provides for an upward adjustment of shadow rent increase from the fixed 3.75% annual level for the remainder of the Lease term, so that the County will be made whole for any such shortfall. Due to the delayed imposition of the effective date of the Agreement, and the consequent delayed imposition of the increase in County participation in sale proceeds, it is now likely that there will be an increase in shadow rent at the time of the 2019 "lookback".
- A precondition of the Plan is that not less than 80% of Condominium Sublessees elect to be bound by the Plan (as discussed further below).

**Details of Proposed Plan and Forbearance Agreement:**

County and Lessee have been negotiating, but have not finalized, an amendment to the Lease to effectuate the Plan. It is anticipated that the terms of the Plan will include establishing two categories of Condominium Sublessees as follows: a) the first category will consist of those Condominium Sublessees who timely elect to be bound by the Plan (Category A Condominium Sublessees), and b) the second category will consist of all other Condominium Sublessees who do not timely elect to be bound by the Plan or that do not make any timely election (Category B Condominium Sublessees). The Plan will not become effective unless and until at least 80% of Condominium Sublessees elect to be

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bound by the Plan. It is further anticipated that the Plan will include, among others, the following terms:

A) Freezing the Lease shadow rent for each Category A Unit at its 2003 level through December 31, 2006 (the "Temporary Shadow Rent Freeze"), providing that, commencing January 1, 2007 and continuing each January 1 thereafter until at least January 1, 2018, the shadow rent for each Category A Unit shall be increased by 3.75%, rather than in accord with the current index specified in the Lease, and that effective as of January 1, 2019 and continuing each January 1 thereafter during the term of the Lease, the shadow rent for each Category A Unit may (but shall not necessarily) be increased by a fixed percentage greater than 3.75% if anticipated repayment of the present value of the loss due to the 3-year freeze of increased shadow rent, with interest, has not occurred, and

B) Increasing the Administrative Transfer Fee to be collected by Lessee for the benefit of County (in addition to any similar fee otherwise payable to Lessee for its own account) upon a change in ownership of each Category A Condominium Unit from 1% to an amount equal to 2.5% of the gross sales price or other consideration given for such change in ownership.

The proposed Lease amendment will not be effective unless and until certain conditions precedent have been satisfied or waived by County and Lessee in writing as soon as practicable, and in all events no later than September 30, 2004, on condition that any amounts which would otherwise be payable to County in the form of increased Administrative Transfer Fees due to Condominium Unit transfers that take place between June 30, 2004 and September 30, 2004 be paid to the County upon the effective date of the proposed Plan. Given that one of the components of the Plan will include a temporary shadow rent freeze for all or substantially all of the Condominium Subleases, the Condominium Sublessees have requested that County refrain from implementing the increase in the shadow rent as to each of them, that is otherwise scheduled to be effective as of January 1, 2004 under the Lease (the "2004 Increase") and County is willing to do so, all upon the terms and subject to the conditions contained in the Agreement. In reliance upon and subject to the terms of the Agreement, Lessee will notify each of the

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Condominium Sublessees that Lessee is temporarily delaying the implementation of the increase in the shadow rent that is scheduled to be effective as of January 1, 2004.

County's agreement to delay the effect of the 2004 Increase shall not be effective unless and until each of the following have occurred by the applicable specified date: (i) Aetna Life Insurance Company, the current Lessee lender, shall have executed a Consent of Mortgagee in substantially the form attached to the Agreement and delivered the same to County not later than December 8, 2003; (ii) Essex Property Trust, Inc. (the prospective purchaser to Lessee's interest in the leasehold) shall have executed an Acknowledgement of Prospective Purchaser in form substantially as attached to the Agreement and delivered the same to County not later than December 8, 2003; and (iii) County shall have received an acceptable opinion of Lessee's counsel confirming enforceability of special charges against Category B Condominium Sublessees not later than December 12, 2003.

County's Limited Forbearance:

If the Forbearance Period commences (i.e., if the conditions contained in Paragraph 1 of the Agreement are satisfied on or before the periods specified in the Agreement), then:

- A) If the Forbearance Period (the period during which the scheduled 2004 shadow rent increase is suspended) ends because the Plan is agreed to and becomes effective, then the 2004 Increase shall apply only to the Category B Units and be retroactive to January 1, 2004 and, not later than five (5) days after the end of the Forbearance Period, Lessee shall pay County the sum of (a) the amount by which the shadow rent for each Category B Unit (as increased by the 2004 Increase) was underpaid during the Forbearance Period, plus (b) interest on the amount described in clause (a) during the Forbearance Period at the rate equal to the investment yield earned on the County's Treasury Pool during such period, as contained in County's Report of Investments covering such period.
- B) If the Forbearance Period ends due to the failure of the Plan to be approved or otherwise through the failure of one or more of the preconditions of effectiveness listed

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in the Agreement, then the 2004 Increase shall apply to each of the Condominium Sublessees (both the Category A Units and the Category B Units) and be retroactive to January 1, 2004 and, not later than five (5) days after the end of the Forbearance Period, Lessee shall pay County the sum of (a) the amount by which the Master Lease Shadow Rent for each Prepaid Sublease (as increased by the 2004 Increase) was underpaid during the Forbearance Period, plus (b) interest on the amount described in clause (a) during the Forbearance Period at the rate equal to the investment yield earned on the County's Treasury Pool during such period, as contained in County's Report of Investments covering such period.

Notice to Condominium Sublessees. Promptly after the Agreement has been executed and delivered by Lessee and approved by County, and all of the conditions set forth in Paragraph 1 of the Agreement (consent of the Lessee its lender, acknowledgment by the prospective leasehold purchaser, and legal opinion of Lessees counsel as to enforceability of special charges against Class B Condominium Sublessees) have been timely satisfied, Lessee shall send each of the Condominium Sublessees a Notice of Temporary Freeze of Shadow Rent in the form attached as Exhibit B to the Agreement (the "Condominium Sublessee Notice"). Lessee will agree not to alter the form of the Condominium Sublessee Notice or send any other notices or communications to the Condominium Sublessees concerning the subject matter thereof without County's prior written consent, which shall not be unreasonably withheld or delayed.

Effect of Limited Forbearance: Nothing in the Agreement shall obligate, or constitute a commitment by, County to enter into the Plan. Moreover, County's agreement to the limited forbearance does not constitute a waiver of any other terms or provisions of the Lease, which has not been amended and remains in full force and effect, subject to this Agreement.

The Small Craft Harbor Commission is scheduled to consider the Agreement at its meeting of December 10, 2003 and we will advise your Board of the Commission's recommendation prior to your consideration of the Agreement. County Counsel has approved the Agreement as to form.

The Honorable Board of Supervisors  
December 1, 2003  
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### **ENVIRONMENTAL DOCUMENTATION**

The proposed Agreement is categorically exempt under the California Environmental Quality Act pursuant to Class 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines. This proposed action and Agreement, in and of themselves, do not authorize any construction or other activity.

### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

There is no impact on current County services as a result of the Agreement.

### **CONCLUSION**

Please authorize the Chairman to execute three copies of the Agreement and direct the Executive Officer to return two executed copies of the Agreement to the Department of Beaches and Harbors.

Respectfully submitted,

David Janssen, Chief Administrative Officer

Stan Wisniewski, Director  
Department of Beaches and Harbors

Attachment (1)

c: Executive Officer  
County Counsel

The Honorable Board of Supervisors  
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DJ/SW:rm

December 4, 2003

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director *Stan Wisniewski*

SUBJECT: **CONSENT TO ASSIGNMENT OF LEASEHOLD INTEREST AND  
OPTION FOR AMENDED AND RESTATED LEASE TO FACILITATE  
REDEVELOPMENT - PARCEL 50T (MARINA WATERSIDE  
CENTER) - MARINA DEL REY**

Item 5B on your agenda relates to: a) a proposed assignment of leasehold interest in Parcel 50T (Marina Waterside Center) from the current lessee, Carlisle Realty Holdings I Limited Partnership, to Marina Waterside LLC, a California limited liability company that is controlled by the principal of Caruso Affiliated Holdings, Inc. and, b) a proposed lease option (Option) and amended and restated lease (Restated Lease), designed to facilitate redevelopment of the center by the proposed assignee.

Attached is a copy of the Board Letter that explains the details of both the proposed assignment and the Option and Restated Lease. Your Commission's endorsement of my recommendation to the Board of Supervisors as contained in the attached letter is requested.

SW:rm

Attachment



*To enrich lives through effective and caring service*



December 3, 2003

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**CONSENT TO ASSIGNMENT OF LEASEHOLD INTEREST AND OPTION FOR  
AMENDED AND RESTATED LEASE TO FACILITATE REDEVELOPMENT –  
PARCEL 50T (MARINA WATERSIDE CENTER) - MARINA DEL REY  
(4th DISTRICT)  
(4 VOTES)**

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Find that the proposed assignment of the leasehold interest in Parcel 50T, Lease No. 8106, is categorically exempt under the California Environmental Quality Act pursuant to Class 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.
2. Approve and authorize the Chair of the Board to sign three copies each of the Consent of County of Los Angeles to Assignment of Lease (Consent), attached as Exhibit A, for Parcel 50T from Carlisle Realty Holdings I Limited Partnership, a Massachusetts limited partnership ("Carlisle"), to Marina Waterside LLC, a California limited liability company (MW).
3. Find that approval of the proposed Option to Amend Lease Agreement ("Option"), attached as Exhibit B, is categorically exempt under the California Environmental Quality Act pursuant to Class 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.



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4. Approve and authorize the Chair of the Board to sign the attached Option granting to the recommended lessee, upon fulfillment of stated conditions, the right to extend the term of its existing ground lease on Parcel 50T by 39 years.

#### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

##### **Assignment of Leasehold**

Carlisle is the lessee of Parcel 50T by virtue of a previous assignment, approved by your Board on November 1, 1988. Carlisle is now requesting the County's consent to the assignment of its leasehold interest in Parcel 50T, commonly known as the Marina Waterside Center ("Waterside"), to MW.

Marina del Rey leases provide that the County's consent is required on most lease assignments and that such consent may not be unreasonably withheld. Department of Beaches and Harbors policy provides that the County's approval or denial of any assignment will be based on the following criteria: (a) the financial condition of the assignee; (b) the price to be paid for the leasehold as it relates to the existing development thereon; and (c) management of the leasehold by the new lessee being in the best interests of the Marina as a whole.

Our review has found: 1) MW is a limited liability company formed for the purpose of owning and operating the leasehold, whose single member, Rick Caruso, is an experienced developer and principal of Caruso Affiliated Holdings, Inc., a company that acquires, develops, owns and manages high-quality neighborhood and regional retail shopping centers throughout Southern California, and MW has appropriate financial resources to own and operate the leasehold and perform the anticipated renovations and improvements to the leasehold; b) the sales price appears reasonable for the leasehold and improvements thereon; and c) the assignee and its proposed management have the requisite experience in acquiring, developing and managing shopping center developments similar to Waterside.

##### **Option and Amended and Restated Lease**

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The proposed Option for Parcel 50T is the result of negotiations with MW, with the consent of Carlisle, for such Option. The attached Option is designed to allow the prospective lessee (MW), to exercise its option and receive the benefits of the Amended and Restated Lease (Restated Lease), attached as Exhibit C, upon demonstration that it has satisfied all of the conditions for exercise contained in the Option and has received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities for the construction of the development project. If the lessee does not exercise the Option, the new percentage rents and a number of improved lease terms will nonetheless be incorporated by amendment into the current lease.

The Restated Lease provides for a 39-year lease extension; payment of a \$500,000 lease extension fee; complete renovation of the existing 125,653 square foot shopping center, including new building facades, landscaping, lighting, sidewalk treatments, signage, parking lot reconfiguration and "screening" and landscape treatment of the Lincoln Boulevard exposure of the center, in addition to 9,500 square feet of new construction (expansion of the existing Ralphs market and conversion to an upscale, Ralphs "FreshFare" market) to replace 5,000 square feet of existing building, resulting in a remodeled shopping center of 130,153 square feet; establishment of a minimum expenditure for common area and building exterior upgrades equal to 1.5% of the gross revenues derived from the leasehold for years 1 through 5 of the extended lease term and 2% of such gross revenue thereafter, less any approved capital expenditures after extended lease year 10, to be utilized for an additional Director-approved renovation not later than 20 years after the effective date of the Restated Lease and, again, by the end of each 15 years thereafter; establishment of new minimum and percentage rents; County participation in leasehold sale and/or refinance; revised arbitration procedures; County right to recapture the leasehold if the lessee pursues its sale; establishment of a sinking fund to remove leasehold improvements at lease termination; liquidated damages of \$100 per day (adjusted for inflation) for each cited maintenance deficiency that remains uncured after the specified cure period; and other miscellaneous improvements to the lease (e.g., payment of late fees and interest on overdue County payments and enhanced audit and record-keeping standards). Once the lessee has obtained all necessary project entitlements and has fulfilled the other requirements entitling it to exercise the Option, we will return to your Board for authority to execute the Restated Lease in substantially the form attached.

The Department has obtained an appraisal that confirms the return to the County from the lease extension is equivalent to, or greater than, fair market value.

Implementation of Strategic Plan Goals

These recommendations are consistent with the County's Strategic Plan Goal of "Service Excellence," in that appropriate management of the leasehold and protection of County interests are maintained in the transfer of the ownership interests, and of County Goal of "Fiscal Responsibility," in that the recommended Option and Restated Lease will allow the Department to implement that portion of its Strategic Plan that enhances strategic partnerships with existing and prospective lessees through proactive implementation of the Marina del Rey Asset Management Strategy toward both revenue maximization and property redevelopment.

The following chart details the proposed deal terms of the Restated Lease providing for the 39-year lease extension as they relate to your Board's existing lease extension policy:

| BOARD POLICY ITEM  | PROPOSED DEAL TERMS – PARCEL 50T   |
|--|--|
| <b>REDEVELOPMENT</b><br>Redevelopment of existing improvements | <ul style="list-style-type: none"><li>• Renovation of existing 125,653 sf shopping center, including the Ralphs market, conversion to a Ralphs FreshFare, and upon satisfaction of Ralphs conditions, an approximate 9,500 sf expansion of Ralphs (replacing 5,000 sf of existing building). Total renovation to be completed within 2 years of lessee's exercise of Option, exclusive of delays caused by force majeure, which in no event shall extend the completion date for more than 2 years.</li><li>• Total development cost to be not less than \$8,865,000 plus additional amounts up to \$2,000,000 for possible Ralphs expansion.</li><li>• No later than the 20<sup>th</sup> anniversary of the effective date of the Restated Lease, lessee shall be obligated to upgrade the common areas and building facades and by the end of each 15 years thereafter. Minimum expenditures for the first scheduled upgrade shall be equal to 1.5% of leasehold gross revenue for years 1 through 5 and 2% of such gross revenues thereafter, less any approved capital expenditures incurred after lease year 10. Subsequent upgrades shall be equal to 2% of leasehold gross revenue from the date of the previous upgrade.</li></ul> |

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| <b>EXTENSION TERM</b>  | <ul style="list-style-type: none"><li>• Option to extend lease for 39 years, from February 1, 2024 to January 31, 2063. The Option is exercisable by lessee within 6 months of grant of Option by Board of Supervisors. Lessee can exercise Option only after it has obtained all required planning, zoning and entitlement approvals, including approvals by Design Control Board, Regional Planning, Board of Supervisors (if applicable) and Coastal Commission (if applicable), and has provided to County satisfactory evidence of project financing. If lessee is unable to obtain all of the necessary entitlement and financing approvals within the 6-month period, the Director may grant, in his discretion, one 6-month extension if lessee can demonstrate it has diligently pursued those approvals. If lessee obtains its approvals within the 6-month (or 12-month) period, but such approvals are subject to litigation or appeal brought by a third party, then the Option exercise date will be tolled pending the resolution of such litigation or appeal; provided, however, that the Option exercise date shall in no event be later than 4 years after the date of the grant of Option.</li></ul> |
| <b>EXTENSION FEE</b><br>Fee equal to or commensurate with value of the extension | <ul style="list-style-type: none"><li>• An extension fee in the amount of \$500,000, payable as set forth below.</li><li>• Lessee shall pay a non-refundable option fee of \$100,000 concurrent with the execution of the Option. Such payment shall be credited against the extension fee if the Option is exercised, but shall not be refundable in the event the Option is not exercised.</li><li>• The remaining \$400,000 shall be payable in 7 equal annual principal installments plus interest (at the 10-year Treasury Bond rate) accrued on the unpaid balance of the extension fee, beginning at the commencement of the 4<sup>th</sup> extended lease year.</li></ul>  |
| <b>MARKET RATE RENTS</b><br>Ensure fair market rents                             | <ul style="list-style-type: none"><li>• Minimum annual rent set upon exercise of Option to \$750,000 for the first 5 lease years and reset for the 6<sup>th</sup> year, and every 3 years thereafter, equal to 75% of the previous 3 years' average annual total rent paid to County, subject to renegotiation to fair market value at the commencement of the 21<sup>st</sup> year and every 10 years thereafter.</li><li>• Percentage rents:<ul style="list-style-type: none"><li>3.5% of Food &amp; Beverage gross receipts</li><li>6.0% of all other subtenant gross rent revenues paid to lessee, plus property tax, and insurance recoveries paid by subtenants to lessee as provided under current lease terms</li></ul></li><li>• Percentage rents fixed for a 20-year period from effective date of the Restated Lease and are subject to renegotiation to fair market rental as of the 1st day of the 21st year and every 10 years thereafter.</li></ul>   |

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| <b>PARTICIPATION IN SALE AND REFINANCE</b><br>Secure County participation in sale and refinance of leasehold | <ul style="list-style-type: none"> <li>• Sale Participation: Greater of 5% (provided that any sale during the 1<sup>st</sup> 10 years after exercise of the Option shall be for an amount at least equal to 105.26% of lessee's cost) of Gross Proceeds or 20% of Net Profit upon assignment of leasehold.</li> <li>• Refinance Participation: 20% of Net Proceeds not reinvested in leasehold improvements.</li> </ul> |
| <b>COUNTY ADMINISTRATIVE COSTS</b><br>Ensure payment for County costs for lease extension and administration | <ul style="list-style-type: none"> <li>• Reimbursement of County costs for extension negotiations/lease documentation.</li> </ul>   |
| <b>COUNTY INCOME CONTINUITY</b><br>Ensure County revenue flow during redevelopment                           | <ul style="list-style-type: none"> <li>• Minimum annual rent set upon exercise of option at \$750,000 for first 5 years and reset in the 6<sup>th</sup> year, and every 3 years thereafter, to equal 75% of the previous 3 years' average annual total rent paid to County.</li> </ul>  |
| <b>RIGHT TO RECAPTURE</b>  | <ul style="list-style-type: none"> <li>• County has right to recapture the leasehold if lessee desires to either assign or sell a controlling interest in leasehold.</li> </ul>   |
| <b>LEASE ASSIGNMENT-DISCLOSURE ISSUES</b>  | <ul style="list-style-type: none"> <li>• Lessee has agreed to County disclosure requirements relating to identity, operating experience and character/reputation of proposed assignees, as well as to disclosure of financial information in conformity with County policies.</li> </ul>  |
| <b>APPRAISAL</b>   | <ul style="list-style-type: none"> <li>• County has received an appraisal that confirms return to the County from the lease extension is equivalent to, or greater than, fair market value.</li> </ul>  |

### Additional Matters

|                    |  |
|--------------------|--|
| <b>OTHER TERMS</b> | <ol style="list-style-type: none"><li>1. 10 years prior to expiration of lease, lessee to structure funding for removal of improvements (at County's election).</li><li>2. Rental renegotiation and insurance disputes subject to rent-a-judge procedure pursuant to "baseball" type arbitration.</li><li>3. Maintenance standards for improvements to conform to Marina del Rey standards as revised from time to time.</li><li>4. Lease administrative items include a) late fee of 6% plus interest at prime plus 3% for any late payments, b) security deposit equal to 3 months' minimum rent, c) insurance levels reset/renegotiated upon execution of the Restated Lease and every 5 years thereafter, d) County maintains approval rights over all construction plans and specifications, e) enhanced audit and record-keeping standards.</li><li>5. Liquidated damages of \$100 per day (adjusted for inflation) for each cited maintenance deficiency that remains uncured after a specified cure period, to be assessed against the security deposit.</li><li>6. In the event that a) the improvements are damaged or destroyed, unless from a cause not required to be insured against, then only in the event of all, or substantially all, of the improvements are damaged, or b) within 5 years of the lease term, the improvements are damaged equal to at least 25% of cost of replacement, or c) due to condemnation of at least 25% of the center value as measured by the then cost of replacement or the parking ratio is decreased below 4.6 parking spaces per 1,000 sf of floor area, lessee shall have the right to assign all insurance and condemnation proceeds to County and terminate the lease. In all other instances, lessee shall have the obligation to rebuild and shall have no right to terminate the lease.</li></ol> |
|--------------------|--|

If the Lessee does not or is unable to exercise the Option on or before its stated expiration date (including any extensions), it is required to execute an amendment to the current lease, which will add the following requirements to its currently-existing lease: a) County participation in sale and refinance; b) the obligation to reimburse the County's actual costs incurred for outside consultants, County Counsel and the Department's lead negotiator in the review, negotiation, preparation and documentation of the Restated Lease; c) the County's right to recapture the leasehold in the event of it being offered for sale; d) a sinking fund for the removal of lease improvements upon lease termination; e) disclosure provisions in the event of lease assignment; f) assessment of a late fee and interest for late payments due the County; g) security deposit equal to 3 months' minimum rent (with the possibility of being reduced to two months' minimum rent by fulfilling certain

requirements); h) insurance levels newly set and renegotiated every 5 years; i) provision for enhanced audit and record-keeping standards; j) leasehold maintenance in conformity with Marina standards as revised from time-to-time; k) starting in the sixth lease year, and every three years thereafter, the minimum rent to be adjusted to 75% of preceding 3 years' average total rent and renegotiated with percentage rent and insurance provisions 20 years after exercise of the Option and every tenth lease year thereafter; and l) modernized arbitration provisions.

#### **FISCAL IMPACT/FINANCING**

The current County percentage rent equals 3.25% of food and beverage gross sales and 20% of subtenant gross rent revenues plus property tax and insurance recoveries paid by subtenants to the lessee. The Restated Lease raises the food and beverage gross percentage rent to 3.5% and reduces other rent to 16% of the referenced subtenant payments. The initial net dollar effect is to provide the County with approximately the same total rent as is currently generated by the leasehold, but with greater upside potential due to both built-in periodic rent increases in the new Ralphs "FreshFare" market lease and the expected larger rents to be derived from upgrading the center, as detailed below. The Restated Lease will produce two categories of fiscal benefit to the County: 1) an extension fee; and 2) rent increases due to the upgrading and modernization of the remodeled shopping center and the increase in square footage of the shopping center. Each component is discussed in detail below.

#### **Extension Fee**

Lessee will pay an extension fee of \$500,000 due on exercise of the Option, payable as a non-refundable option fee of \$100,000 concurrent with the execution of the Option, with the remaining balance of \$400,000 payable in seven equal installments of \$57,142.86 in principal, plus interest accrued on the unpaid balance at the 10-year Treasury Bond rate, adjusted quarterly, beginning at the commencement of the fourth extended lease year.

#### **Rent Increase Due to New Construction**

The total rent derived from Parcel 50T during calendar year 2002 was approximately \$742,000. The lessee will pay minimum annual rent of \$750,000 for the first five lease

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years, which will effect a guaranteed annual increase even during the renovation/construction period. The initial net dollar effect of the rent structure is projected to provide the County with approximately the same total rent as is currently generated by the leasehold, but with greater upside potential due to both built-in periodic tenant rent increases in the new sublease for the expanded, upscaled food market (Ralphs FreshFare) and the expected larger rents to be derived from the upgrading of the center and, especially, as tenant turnover of current subleases allow for further restaurant and other tenant upgrades.

Costs of consultants and primary County staff involved in the negotiation and development of the Option and Restated Lease are being reimbursed by the recommended assignee on an ongoing basis.

#### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

On February 1, 1964, the County entered into a 60-year lease for the premises currently known as Parcel 50T, Marina Waterside Center. On November 1, 1988, your Board approved an assignment wherein Benequity Properties, a California corporation, assigned all its interest in Parcel 50T to Carlisle. The parcel is currently improved with 125,653 square feet of retail/commercial and restaurant buildings on 9.726 acres of land area. In exchange for a lease extension to the date of January 31, 2063 that will be available upon satisfaction of the Option's enumerated conditions and your Board's approval of the Restated Lease, lessee has agreed to remodel all of the existing improvements and expand the existing Ralphs market. The Restated Lease will also require renovations to physically reposition the project by the 20<sup>th</sup> anniversary of the effective date of the Restated Lease and again each 15 years thereafter.

The most recent maintenance inspection of Parcel 50T was completed on August 11, 2003, and identified 5 items requiring repairs. The Department of Beaches and Harbors' Facilities & Property Maintenance division has reviewed the specified items, as well as repair requirements to bring them to Marina standards. The assignee has specifically committed, as a condition of the Department's consent to the assignment, to assume the lease obligation to maintain the leasehold in accordance with all maintenance, repair and improvement requirements. A rental audit was completed on December 31, 2001, and the



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proposed assignee is aware of and has agreed to assume the responsibility for any additional rent or outstanding lease payment obligations or other payments that may be identified in future audits from and after the last audit date.

The lessee is in process of making application to the Regional Planning Department for its discretionary land use entitlements under the applicable standards of the Local Coastal Program (LCP), including those related to building height and traffic requirements. Approval of the Option is without prejudice to the County's full exercise of its regulatory authority in the consideration of the land use entitlements required for the possible exercise of the Option.

Amendment and extension of the existing lease is authorized by Government Code Sections 25907 and 25536. The extended lease term is in conformance with the maximum 99-year period authorized by California law.

The Small Craft Harbor Commission is scheduled to consider the Director's recommendations to approve the assignment and Option at its meeting of December 10, 2003. We will advise your Board of the Commission's recommendations prior to your consideration of this request. County Counsel has approved the documents as to form.

#### **ENVIRONMENTAL DOCUMENTATION**

Approval of the assignment of leasehold interests and the Option are categorically exempt under the California Environmental Quality Act pursuant to Class 1(r) and 4(j) of the County's Environmental Document Reporting and Procedures Guidelines. Approval of the Option does not authorize construction or re-construction of any improvements on the parcel. The discretionary land use entitlements and the corresponding environmental documentation necessary to implement the proposed redevelopment/replacement contemplated by the Option and the Restated Lease are under review by the Department of Regional Planning.

#### **CONTRACTING PROCESS**

The lessee's proposal for a lease extension was submitted to the Department and negotiations were pursued for the proposed Option, as well as the Restated Lease, pursuant to the Board-adopted Lease Extension Policy. Upon lessee's demonstration that it

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has satisfied the conditions for exercise contained in the Option and has received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities for the construction of the development project, we will return to your Board for final confirmation that the conditions and approvals for exercise contained in the Option have been satisfied and request authorization for execution of the Restated Lease.

**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

There is no impact on other current services or projects.

**CONCLUSION**

Please authorize the Chairman of the Board of Supervisors to sign three copies each of the Consent and Option and authorize the Executive Officer of the Board to acknowledge the Chairman's signature on each document and return two executed copies of each to the Department of Beaches and Harbors.

Respectfully submitted,

*Stan Wisniewski*

Stan Wisniewski, Director

SW:RM:AK:GB  
Attachments (3)

c: Chief Administrative Officer  
Executive Officer, Board of Supervisors  
County Counsel

## CONSENT TO ASSIGNMENT OF LEASE

The COUNTY OF LOS ANGELES ("County"), Lessor under that certain lease No. 8106, dated May 8, 1964, as amended ("Lease"), applicable to those certain premises commonly known as Parcel 50T, Marina del Rey Small Craft Harbor, described in Exhibit "A," attached hereto and incorporated herein by this reference, does hereby consent to the assignment of said Lease by the present lessee, CARLISLE REALTY HOLDINGS I LIMITED PARTNERSHIP, a Massachusetts limited partnership ("Carlisle"), to MARINA WATERSIDE LLC, a California limited liability company ("Waterside"), in accordance with that certain Assignment of Lease and that certain Acceptance of Assignment of Lease prepared in connection with the proposed assignment contemplated thereby (the, "Assignment"). County further agrees that upon the effective date of said Assignment, Carlisle shall be fully relieved of, and released from, any and all obligations to County under the Lease accruing on or after the effective date of said Assignment. It is further understood and agreed that the County's consent to the Assignment is subject to the following express conditions:

- A. This Consent to Assignment shall be null and void and of no further force or effect, until and unless the Assignment is complete and irrevocable in all respects within sixty (60) days of the date of execution on behalf of the County of this Consent to Assignment of Lease.
- B. This Consent to Assignment is contingent upon Waterside's assumption and agreement to perform the obligations and liabilities of the lessee under the Lease in accordance with and subject to the provisions of the Acceptance of Assignment of Lease being executed and delivered by Waterside concurrently herewith. Nothing herein shall limit the County's ability to pursue remedies against either Carlisle or Waterside, at the County's option, for obligations of the lessee created prior to this assignment, by the terms, covenants and conditions of said Lease, subject, however, to the terms and conditions of the Acceptance and Assignment of Lease executed and delivered by Waterside.
- C. The Assignment, having once become complete and irrevocable in all respects, shall thereafter be fully binding upon Waterside whether or not Carlisle and Waterside have entered into a separate agreement or understanding to which the County is not a party and which provides for or otherwise purports to affect the Assignment, and whether or not in such event any party thereto alleges, claims or otherwise shows or proves that there has been a breach, default, violation, or termination of any such separate agreement.
- D. Waterside shall not make any further assignment or sublease of the Lease, nor any portion thereof, without the written consent of County as lessor having first been obtained thereto in accordance with, and to the extent required by, the provisions of Section 10.03 of the Lease.

CONSENT TO ASSIGNMENT OF LEASE

The COUNTY OF LOS ANGELES ("County"), Lessor under that certain lease No. 8106, dated May 8, 1964, as amended ("Lease"), applicable to those certain premises commonly known as Parcel 50T, Marina del Rey Small Craft Harbor, described in Exhibit "A," attached hereto and incorporated herein by this reference, does hereby consent to the assignment of said Lease by the present lessee, CARLISLE REALTY HOLDINGS I LIMITED PARTNERSHIP, a Massachusetts limited partnership ("Carlisle"), to MARINA WATERSIDE LLC, a California limited liability company ("Waterside"), in accordance with that certain Assignment of Lease and that certain Acceptance of Assignment of Lease prepared in connection with the proposed assignment contemplated thereby (the, "Assignment"). County further agrees that upon the effective date of said Assignment, Carlisle shall be fully relieved of, and released from, any and all obligations to County under the Lease accruing on or after the effective date of said Assignment. It is further understood and agreed that the County's consent to the Assignment is subject to the following express conditions:

- A. This Consent to Assignment shall be null and void and of no further force or effect, until and unless the Assignment is complete and irrevocable in all respects within sixty (60) days of the date of execution on behalf of the County of this Consent to Assignment of Lease.
- B. This Consent to Assignment is contingent upon Waterside's assumption and agreement to perform the obligations and liabilities of the lessee under the Lease in accordance with and subject to the provisions of the Acceptance of Assignment of Lease being executed and delivered by Waterside concurrently herewith. Nothing herein shall limit the County's ability to pursue remedies against either Carlisle or Waterside, at the County's option, for obligations of the lessee created prior to this assignment, by the terms, covenants and conditions of said Lease, subject, however, to the terms and conditions of the Acceptance and Assignment of Lease executed and delivered by Waterside.
- C. The Assignment, having once become complete and irrevocable in all respects, shall thereafter be fully binding upon Waterside whether or not Carlisle and Waterside have entered into a separate agreement or understanding to which the County is not a party and which provides for or otherwise purports to affect the Assignment, and whether or not in such event any party thereto alleges, claims or otherwise shows or proves that there has been a breach, default, violation, or termination of any such separate agreement.
- D. Waterside shall not make any further assignment or sublease of the Lease, nor any portion thereof, without the written consent of County as lessor having first been obtained thereto in accordance with, and to the extent required by, the provisions of Section 10.03 of the Lease.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2003

COUNTY OF LOS ANGELES

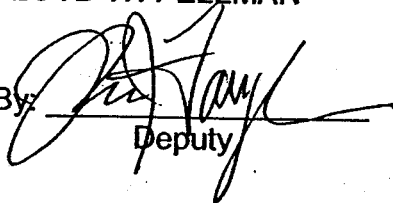
By: \_\_\_\_\_  
Chair, Board of Supervisors

ATTEST:  
VIOLET VARONA-LUKENS,  
Executive Officer of  
the Board of Supervisors

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM  
BY COUNTY COUNSEL

LLOYD W. PELLMAN

By:  \_\_\_\_\_  
Deputy

## OPTION TO AMEND LEASE AGREEMENT

THIS OPTION TO AMEND LEASE AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and between the COUNTY OF LOS ANGELES ("County") and MARINA WATERSIDE, LLC, a California limited liability company ("Lessee").

### R E C I T A L S

A. County, as lessor, and Sandpiper Builders and Michael Sims, as lessee, entered into Lease No. 8106 dated May 8, 1964, as amended (the "Existing Lease") pursuant to which County leases to the current lessee thereunder certain real property in the Marina del Rey Small Craft Harbor commonly known as Parcel No. 50T, as more particularly described in the Existing Lease (the "Premises").

B. Concurrent or substantially concurrent herewith Lessee has acquired all of the right, title and interest of the lessee under the Existing Lease.

C. The term of the Existing Lease is currently scheduled to expire on January 31, 2024 (the "Existing Expiration Date").

D. Lessee has requested County, and County is willing, to grant Lessee an option to extend the term of the Existing Lease through January 31, 2063.

### A G R E E M E N T

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee agree as follows:

1. Grant of Option. County hereby grants to Lessee an option (the "Option") to extend the term of the Existing Lease through January 31, 2063 (the "Extended Expiration Date"). Such extension shall be on the terms and conditions set forth in the form of Amended and Restated Lease Agreement for Parcel 50T attached to this Agreement as Exhibit A (the "Restated Lease").

2. Option Term. The term of the Option (the "Option Term") shall commence on the date of this Agreement and expire on that date (the "Option Expiration Date") which is the earlier of (i) forty-five (45) days following the date of the satisfaction of the Entitlement Conditions, or (ii) six (6) months following the date of this Agreement set forth above, subject to extension as provided in Section 6 below.

3. Exercise of Option. The Option shall be exercisable by Lessee only by strict satisfaction on or before the Option Expiration Date of the following terms and conditions: (i) Lessee shall notify County in writing of its exercise of the Option; (ii) Lessee shall accompany the notice described in the preceding clause (i) with Lessee's (A) execution and delivery to County of the Restated Lease with any blank or bracketed terms set forth in Exhibit A

completed in accordance with the terms and provisions of this Agreement, and (B) payment of the amount by which the Security Deposit required under Article 7 of the Restated Lease exceeds the amount of the security deposit then maintained by Lessee with County pursuant to Section 7 of the Existing Lease; (iii) as of the date of Lessee's delivery of the notice described in clause (i) above Lessee shall not be in breach or default of any term or provision of the Existing Lease, after notice from County and the expiration of any applicable cure period thereunder; (iv) the Entitlement Conditions (as defined below) shall have been satisfied; (v) Lessee shall have provided evidence satisfactory to County of its having sufficient financial resources, as determined by the Director of the Department of Beaches and Harbors of the County ("Director"), to complete the Redevelopment Work (taking into consideration the construction contribution to be made by Alpha Beta Company, as sublessee, in connection with the renovation and proposed expansion of the existing supermarket facility on the Premises (the "Supermarket Premises")); (vi) Director shall have approved all plans, specifications and other materials for the Redevelopment Work required to be submitted to Director pursuant to Section 5.3 of this Agreement; and (vii) at Lessee's option, there shall be no legal action or proceeding pending to contest the issuance of the Entitlements (as defined below), or to enjoin or restrain the performance of the Redevelopment Work. Upon Lessee's proper and timely exercise of the Option, County shall execute and deliver the Restated Lease not later than forty-five (45) days following the date of Lessee's exercise of the Option.

For purposes hereof, the "Entitlement Conditions" shall mean the following conditions: (a) Lessee shall have received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities (including County and the California Coastal Commission) for the construction of the Redevelopment Work (as defined below), including without limitation, Design Control Board approval (the "Entitlements"), and (b) any appeal period to contest the issuance of the Entitlements shall have lapsed. For purposes of this Agreement, the "Redevelopment Work" shall have the meaning given such term in Section 5.1 of the Restated Lease. The Entitlements shall not include the building permits for the Redevelopment Work.

#### 4. Option Fee/Extension Fee.

4.1 Option Fee. In consideration of County's grant of the Option to Lessee, Lessee shall pay to County concurrent with Lessee's execution of this Agreement the sum of One Hundred Thousand Dollars (\$100,000.00) (the "Option Fee"). The Option Fee shall be non-refundable, but shall be applied against the Extension Fee described below if Lessee exercises the Option.

4.2 Extension Fee. If Lessee exercises the Option, Lessee shall pay County an extension fee in the amount of Five Hundred Thousand Dollars (\$500,000.00) (the "Extension Fee") to compensate County for the value of the lease extension set forth in the Restated Lease. The Option Fee shall be applied against the Extension Fee. The remaining Four Hundred Thousand Dollars (\$400,000.00) of the Extension Fee shall be paid in seven (7) equal annual principal installments of \$57,142.86 each, plus interest accrued on the unpaid principal balance of the Extension Fee as provided below (the "Extension Fee Installment Payments"). Interest shall accrue on the unpaid balance of the Extension Fee from the Effective Date of the Restated Lease until paid by Lessee, at an annual rate of interest equal to the interest rate in

## OPTION TO AMEND LEASE AGREEMENT

THIS OPTION TO AMEND LEASE AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and between the COUNTY OF LOS ANGELES ("County") and MARINA WATERSIDE, LLC, a California limited liability company ("Lessee").

### R E C I T A L S

A. County, as lessor, and Sandpiper Builders and Michael Sims, as lessee, entered into Lease No. 8106 dated May 8, 1964, as amended (the "Existing Lease") pursuant to which County leases to the current lessee thereunder certain real property in the Marina del Rey Small Craft Harbor commonly known as Parcel No. 50T, as more particularly described in the Existing Lease (the "Premises").

B. Concurrent or substantially concurrent herewith Lessee has acquired all of the right, title and interest of the lessee under the Existing Lease.

C. The term of the Existing Lease is currently scheduled to expire on January 31, 2024 (the "Existing Expiration Date").

D. Lessee has requested County, and County is willing, to grant Lessee an option to extend the term of the Existing Lease through January 31, 2063.

### A G R E E M E N T

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee agree as follows:

1. Grant of Option. County hereby grants to Lessee an option (the "Option") to extend the term of the Existing Lease through January 31, 2063 (the "Extended Expiration Date"). Such extension shall be on the terms and conditions set forth in the form of Amended and Restated Lease Agreement for Parcel 50T attached to this Agreement as Exhibit A (the "Restated Lease").

2. Option Term. The term of the Option (the "Option Term") shall commence on the date of this Agreement and expire on that date (the "Option Expiration Date") which is the earlier of (i) forty-five (45) days following the date of the satisfaction of the Entitlement Conditions, or (ii) six (6) months following the date of this Agreement set forth above, subject to extension as provided in Section 6 below.

3. Exercise of Option. The Option shall be exercisable by Lessee only by strict satisfaction on or before the Option Expiration Date of the following terms and conditions: (i) Lessee shall notify County in writing of its exercise of the Option; (ii) Lessee shall accompany the notice described in the preceding clause (i) with Lessee's (A) execution and delivery to County of the Restated Lease with any blank or bracketed terms set forth in Exhibit A



effect from time to time on 10 Year United States Treasury Bonds, adjusted on a quarterly basis (i.e., the first day of each January, April, July, and October). The first Extension Fee Installment Payment shall be due on the third (3<sup>rd</sup>) anniversary of the Effective Date of the Restated Lease and the remaining six (6) Extension Fee Installment Payments shall be due on each of the next six (6) anniversaries of the Effective Date of the Restated Lease. Lessee shall have the right, at Lessee's option, to prepay the Extension Fee, in whole or in part, at any time, without penalty.

5. Entitlements and Plan Preparation During Option Term.

5.1 Obtaining Entitlements. Lessee shall use its best efforts to obtain the Entitlements and to satisfy the Entitlement Conditions as soon as possible following the date of this Agreement. Such efforts shall include Lessee's expenditure of such funds, including, without limitation, application fees, travel costs, architectural fees and consulting and lobbying fees, as reasonably necessary to expedite the permit, license and other approval processes.

5.2 County Cooperation. In its proprietary capacity, the Department of Beaches and Harbors of the County of Los Angeles (the "Department") shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the Entitlements. Such cooperative efforts may include the Department's joinder in any application for the Entitlements where joinder therein by the Department is required or helpful; provided, however, that Lessee shall reimburse County for the Actual Costs (as defined in the Restated Lease) incurred by the Department in connection with such joinder or cooperative efforts. Notwithstanding the foregoing, Lessee and County acknowledge that the approvals given by County under this Agreement and/or the Restated Lease shall be approvals pursuant to its authority under Sections 25907 and 25536 of the California Government Code and given in its proprietary capacity; that approvals given under this Agreement and/or the Restated Lease in no way release Lessee from using its best efforts to obtain, at Lessee's expense, all permits, licenses and other approvals required by law for the construction of the Redevelopment Work and operation and other use of the Premises; and that the Department's duty to cooperate and County's approvals under this Agreement and/or the Restated Lease do not in any way modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Agreement and/or the Restated Lease.

5.3 Plans and Specifications for Redevelopment Work. The Redevelopment Work shall be constructed by Lessee in accordance with and subject to the terms and provisions of Article 5 of the Restated Lease. The requirements of Article 5 of the Lease include, without limitation, the obligation of Lessee to prepare and submit to the Director for the Director's approval certain plans, specifications, construction cost estimates and other materials pertaining to the Redevelopment Work, as set forth in more detail in Section 5.3 of the Restated Lease. The schedule for the preparation, submittal and approval of such plans, specifications, construction cost estimates and other materials shall generally proceed in accordance with the terms and provisions of the Restated Lease. Notwithstanding the foregoing, during the period commencing on the date of this Agreement and expiring on the earlier of Lessee's exercise of the Option or the Option Expiration Date, Lessee shall prepare and submit to Director for Director's approval, any portions of the plans, specifications and other materials described in Section 5.3 of the Restated Lease that are required to be submitted to governmental authorities (including the County, the Design Control Board and the California Coastal Commission) in connection with

Lessee's applications for and/or receipt of the Entitlements for the Redevelopment Work. Lessee shall accompany such plans, specifications and other materials with the construction cost estimates described in such Section 5.3, as applicable. The standards and time periods for Director's review and approval of the materials submitted by Lessee pursuant to this Section 5.3 shall be in accordance with the terms and provisions of Section 5.3 of the Restated Lease, which terms and provisions are hereby incorporated into this Agreement by reference. Such plans, specifications and other materials shall be prepared and submitted to Director by Lessee in accordance with a schedule submitted by Lessee and reasonably approved by Director that facilitates Lessee's satisfaction of all conditions precedent to the exercise of the Option on or before the Option Expiration Date. In addition to the plans, specifications and materials required to be submitted by Lessee to Director pursuant to this Section 5.3, Lessee shall have the right, at its election, to deliver to Director, for Director's approval, additional plans, specifications and materials pertaining to the Redevelopment Work. Director shall notify Lessee of its approval or disapproval of such additional plans, specifications and materials within the time frames and in accordance with the requirements of Section 5.3 of the Restated Lease.

6. Delay in Exercise of Option. If Lessee is unable to satisfy the Entitlement Conditions within six (6) months after the date of this Agreement, and Director in the exercise of the Director's reasonable judgment determines that Lessee diligently pursued the satisfaction of the Entitlement Conditions within such six (6) month period but was unable to satisfy the Entitlement Conditions as a result of a delay in the processing of the Entitlements by the applicable governmental authority (an "Extraordinary Governmental Delay") or as a result of a delay caused by Force Majeure (as defined in the Restated Lease) (a "Force Majeure Delay"), then the Director shall grant Lessee one or more extensions of the Option Expiration Date. Any such extension shall be limited to the period of delay caused by the Extraordinary Governmental Delay or Force Majeure Delay, and in no event shall such extensions, in the aggregate, extend beyond after the first (1st) anniversary of the date of this Agreement. If Director shall determine that Lessee does not meet the requirements for an extension as provided above, then Lessee shall have the right, within ten (10) days following Director's denial, to submit a written request to the Board of Supervisors of County to reconsider such denial by Director. For purposes hereof, a "delay" by the applicable governmental authority in the processing of Entitlements shall mean the failure of such governmental authority to process Lessee's application for the applicable Entitlements within the period(s) established for such processing by the rules, regulations, guidelines or other Applicable Laws pertaining to such processing.

If Lessee obtains the Entitlements within six (6) months after the date of this Agreement (as such six (6) month period may be extended pursuant to the first paragraph of this Section 6), but such Entitlements are contested by appeal or litigation brought by a third party (a "Contest Delay"), then upon the written request of Lessee, and provided that Lessee continues to use its commercially reasonable efforts to contest the appeal or litigation, Director shall extend the Option Expiration Date until a final order or decision on such appeal or litigation is issued or such appeal or litigation is dismissed or otherwise resolved without further right of appeal; provided, however, in no event shall the Option Expiration Date be extended beyond the fourth (4<sup>th</sup>) anniversary of the date of this Agreement. For purposes of the immediately preceding sentence, a "third party" shall mean any person or entity other than (a) Lessee or any person or entity with any direct or indirect economic interest in Lessee, or (b) the governmental agency,

commission, board or other instrumentality that issued the Entitlement that is the subject of the appeal or litigation.

Director shall have no right or obligation to extend the Option Expiration Date under this Section 6 if Lessee is in material breach or default of the Existing Lease following notice and the expiration of any applicable cure period, or if Lessee is in material breach or default under this Agreement. No Extraordinary Governmental Delay, Force Majeure Delay or Contest Delay shall be considered to have commenced under this Section 6 until such time as Lessee shall have notified Director in writing of such delay. If Lessee desires to have the Option Expiration Date extended pursuant to this Section 6, then Lessee must deliver written notice to Director of its request for the extension not later than thirty (30) days prior to the Option Expiration Date, as such date may have been previously extended; provided, however, that if the basis for the delay first arises during the thirty (30) day period prior to the Option Expiration Date (as previously extended), then the required date by which Lessee must deliver its written request for an extension shall be extended until the earlier of (i) ten (10) days after Lessee first becomes aware of the delay, or (ii) 5:00 p.m. (Pacific Time) on the Option Expiration Date (as previously extended).

7. Alternative Lease Amendment. If Lessee does not exercise the Option on or before the Option Expiration Date (or the Option is not exercisable by the Option Expiration Date), then (a) the Option shall be automatically terminated, and (b) within forty-five (45) days following the Option Expiration Date, County and Lessee shall execute and deliver an amendment to the Existing Lease (the "Non-Exercise Amendment"), which amendment shall (i) amend and restate Sections 11 through 15 of the Existing Lease in accordance with all of the terms and provisions of Article 4 of the Restated Lease, excepting Section 4.3 of the Restated Lease; (ii) add Article 16 of the Restated Lease to the Existing Lease; (iii) amend and restate Section 7 of the Existing Lease in accordance with Article 7 of the Restated Lease; (iv) amend and restate Sections 8 and 10 of the Existing Lease in accordance with Sections 5.3 through 5.8 of the Restated Lease; (v) amend and restate Section 18 of the Existing Lease in accordance with Sections 2.3 and 2.4 of the Restated Lease; (vi) amend and restate Sections 22A and 22C of the Existing Lease in accordance with Sections 11.1, 11.2 (excepting subsections 11.2.4 and 11.2.5) and 11.3 of the Restated Lease; (vii) amend and restate Section 22B of the Existing Lease in accordance with Article 12 of the Restated Lease; (viii) amend Section 26 of the Existing Lease to adjust the amount of commercial general liability insurance coverage required to be carried by Lessee to equal the amount set forth in the first paragraph of Section 9.3 of the Restated Lease and to add to Section 26 of the Existing Lease the third (3rd) paragraph of Section 9.3 of the Restated Lease; (ix) amend and restate Sections 30, 31 and 32 of the Existing Lease in accordance with Article 14 of the Restated Lease; and (x) incorporate into the Existing Lease the definitions of capitalized terms used in the Restated Lease to the extent such terms are used in the Non-Exercise Amendment pursuant to clauses (i) through (viii) above. For purposes of the Non-Exercise Amendment, all references in the Restated Lease to the "Effective Date" shall mean and refer to the date of the execution and delivery of the Non-Exercise Amendment, but not later than forty-five (45) days following the Option Expiration Date.

8. County Costs. Regardless of whether Lessee exercises the Option, Lessee shall promptly reimburse County for the Actual Costs (as defined in the Restated Lease) incurred

by County in the review, negotiation, preparation and documentation of the Restated Lease, the Non-Exercise Amendment, this Agreement and the term sheets and memoranda that preceded the foregoing. The parties acknowledge that Lessee has deposited the sum of Ten Thousand Dollars (\$10,000.00) toward those costs. County shall deliver to Lessee an initial report detailing such expenditures within ninety (90) days after the date of this Agreement. County shall thereafter deliver supplemental reports to Lessee for costs, if any, incurred subsequent to the initial report.

9. Miscellaneous.

9.1 Time is of the Essence. Time is of the essence of this Agreement, including, without limitation, with respect to all times, restrictions, conditions and limitations set forth herein.

9.2 Waivers. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms or provisions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or provision of this Agreement, nor shall failure on the part of either party to require exact, full and complete compliance with any of the covenants, conditions, terms or provisions of this Agreement be construed to in any manner change the terms hereof or estop that party from enforcing the full provisions hereof.

9.3 Notices. All notices required or permitted to be given under this Agreement shall be given in accordance with the terms and provisions of Section 15.10 of the Restated Lease.

9.4 Captions. The captions contained in this Agreement are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Agreement.

9.5 Attorneys' Fees. In the event of any action, proceeding or arbitration arising out of or in connection with this Agreement, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation, attorneys' fees for County Counsel's services where County is represented by the County Counsel and is the prevailing party.

9.6 No Assignment. Lessee shall have no right to assign or transfer its rights or obligations under this Agreement to any other person or entity, without the express written consent of County, which consent may be withheld by County in its sole and absolute discretion.

9.7 Entire Agreement. This Agreement sets forth the full and complete understanding of the parties relating to the subject matter hereof, and supercedes any and all agreements, understandings and representations made prior hereto with respect to such matters.

9.8 Joint Effort. Preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not be construed more severely against one of the parties than against the other.

9.9 Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

9.10 Counterparts. This Agreement may be signed in any number of counterparts. Each counterpart shall represent an original of this Agreement and all such counterparts shall collectively constitute one fully-executed document.

9.11 Successors and Assigns. Subject to Section 9.6 above, the rights and obligations of the parties under this Agreement shall be binding upon the parties' respective successors and assigns.

9.12 Exhibits. Exhibit A attached to this Agreement is hereby expressly incorporated herein by reference.

IN WITNESS WHEREOF, County and Lessee have entered into this Agreement as of the day and year first written above.

APPROVED AS TO FORM:

THE COUNTY OF LOS ANGELES

LLOYD W. PELLMAN  
COUNTY COUNSEL

By: **ORIGINAL SIGNED**  
Deputy

By: \_\_\_\_\_  
Chair, Board of Supervisors

MARINA WATERSIDE, LLC, a California limited liability company

By: **ORIGINAL SIGNED**  
Rick J. Caruso, Manager

ATTEST:

VIOLET VARONA-LUKENS,  
Executive Officer of the Board  
of Supervisors

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: **ORIGINAL SIGNED**

**EXHIBIT C**

**AMENDED AND RESTATED LEASE AGREEMENT**

by and between

County of Los Angeles

and

Marina Waterside, LLC,  
a California Limited Liability Company

(Parcel 50T — Lease No. \_\_\_\_)

Dated as of \_\_\_\_\_, \_\_\_\_\_

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**AMENDED AND RESTATED LEASE AGREEMENT  
PARCEL 50T — MARINA DEL REY**

THIS AMENDED AND RESTATED LEASE AGREEMENT ("Lease") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ ("Effective Date"), by and between the COUNTY OF LOS ANGELES ("County"), as lessor, and MARINA WATERSIDE, LLC, a California limited liability company (together with its permitted successors and assigns, "Lessee"), as lessee.

WITNESSETH

WHEREAS, County, as lessor, and Sandpiper Builders and Michael Sims, as lessee, entered into Lease No. 8106 (as amended prior hereto, the "Existing Lease") concerning the lease by County to the lessee thereunder of that certain real property in the Marina del Rey Small Craft Harbor commonly known as Parcel No. 50T and which is more specifically described on Exhibit A attached hereto and incorporated herein by this reference (the "Premises");

WHEREAS, the term of the Existing Lease currently extends through January 31, 2024 (the "Existing Expiration Date");

WHEREAS, Lessee has acquired the lessee's leasehold interest under the Existing Lease; and

WHEREAS, County and Lessee have entered into that certain Option to Amend Lease Agreement dated \_\_\_\_\_, 2003 (the "Option Agreement"), pursuant to which County has granted Lessee an option (the "Option") to amend and restate the Existing Lease in its entirety, upon the terms and conditions more specifically provided herein, including, without limitation, an extension of the term of the Existing Lease through January 31, 2063; and

WHEREAS, Lessee has exercised the Option in accordance with the terms and provisions of the Option Agreement.

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto and each of them do agree that the Existing Lease is hereby amended and restated in its entirety, as follows:

1. BACKGROUND AND GENERAL.

1.1 Definitions. The defined terms in this Lease shall have the following meanings:

1.1.1 "ACCOUNTING YEAR" shall have the meaning set forth in Section 14.6.

1.1.2 "ACTUAL COST" shall mean the reasonable cost and expenses incurred by County with respect to a particular activity or procedure, including without limitation (i) expenditures to third party legal counsel, financial consultants and advisors,



(ii) costs incurred in connection with appraisals, and (iii) County's appropriate internal overhead and administrative costs, which include without limitation, the value of services provided by County's in-house counsel, lease administrators and/or lease auditors and other County administrative staff below the level of deputy director (the administrative level which is two levels below the County department head).

1.1.3 "ADA" shall have the meaning set forth in Section 1.2.

1.1.4 "ADJUSTMENT DATES" shall have the meaning set forth in subsection 4.2.3.

1.1.5 "ADMINISTRATIVE CHARGE" shall have the meaning set forth in Section 4.6.

1.1.6 "AGGREGATE TRANSFER" shall have the meaning set forth in subsection 4.6.3.

1.1.7 "ALTERATIONS" shall have the meaning set forth in Section 5.2.

1.1.8 "ANNUAL MINIMUM RENT" shall have the meaning set forth in subsection 4.2.1.

1.1.9 "APPLICABLE COSTS" shall have the meaning set forth in subsection 4.8.1.

1.1.10 "APPLICABLE LAWS" shall have the meaning set forth in subsection 1.2.1.

1.1.11 "APPLICABLE RATE" shall mean an annually compounded rate of interest equal to the lesser of (a) ten percent (10%) per annum or (b) the Prime Rate, as defined in subsection 4.4.5, plus three percent (3%) per annum; however, the Applicable Rate shall in no event exceed the maximum rate of interest which may be charged pursuant to Applicable Laws. In the event that the Applicable Rate as determined by the first sentence of this definition exceeds such maximum rate of interest, then the Applicable Rate shall be deemed the maximum rate permissible under Applicable Laws notwithstanding the first sentence of this definition.

1.1.12 "ASSIGNMENT STANDARDS" shall have the meaning set forth in Section 11.2.

1.1.13 "AUDITOR-CONTROLLER" shall mean the Auditor-Controller of the County of Los Angeles, California.

1.1.14 "AWARD" shall have the meaning set forth in subsection 6.1.3.

1.1.15 "BASE VALUE" shall have the meaning set forth in subsection 4.8.1.1.

1.1.16 "BENEFICIAL INTEREST" shall have the meaning set forth in subsection 4.6.4.

1.1.17 "BOARD" shall mean the Board of Supervisors for the County of Los Angeles.

1.1.18 "BUSINESS DAY" shall have the meaning set forth in Section 17.3.

1.1.19 "CALCULATION NOTICE" shall have the meaning set forth in Section 4.7.

1.1.20 "CHANGE OF OWNERSHIP" shall have the meaning set forth in subsection 4.6.1.

1.1.21 "CHANGE OF CONTROL" shall have the meaning set forth in subsection 4.6.1.

1.1.22 "CITY" shall mean the City of Los Angeles, California.

1.1.23 "CONDEMNATION" shall have the meaning set forth in subsection 6.1.1.

1.1.24 "CONDEMNOR" shall have the meaning set forth in subsection 6.1.4.

1.1.25 "CONSUMER PRICE INDEX" shall mean the Consumer Price Index--All Urban Consumers for Los Angeles-Riverside-Orange County, as published from time to time by the United States Department of Labor or, in the event such index is no longer published or otherwise available, such replacement index as may be agreed upon by County and Lessee.

1.1.26 "COUNTY" shall have the meaning set forth in the first paragraph of this Lease.

1.1.27 "COUNTY OPTION" shall have the meaning set forth in subsection 11.2.4.

1.1.28 "COUNTY OPTION PRICE" shall have the meaning set forth in subsection 11.2.4.

1.1.29 "COUNTY POOL RATE" shall have the meaning set forth in subsection 4.4.5 of this Lease.

1.1.30 "DATE OF TAKING" shall have the meaning set forth in subsection 6.1.2.

1.1.31 "DEPARTMENT" shall mean the Department of Beaches and Harbors of the County of Los Angeles.

1.1.32 "DIRECTOR" shall mean the Director of the Department of Beaches and Harbors of the County of Los Angeles or any successor County officer responsible for the administration of this Lease.

1.1.33 "DISQUALIFICATION JUDGMENT" shall have the meaning set forth in subsection 16.15.1.

1.1.34 "DOCUMENTED TRANSACTION COSTS" shall have the meaning set forth in subsection 4.8.1.2.

1.1.35 "EFFECTIVE DATE" shall mean the date set forth in the first preamble paragraph of this Lease.

1.1.36 "ENCUMBRANCE" shall have the meaning set forth in subsection 12.1.1.

1.1.37 "ENCUMBRANCE HOLDER" shall have the meaning set forth in subsection 12.1.1.

1.1.38 "ENR INDEX" shall mean the Engineering News Record (ENR) Construction Cost Index for the Los Angeles Area, or such substitute index as the parties may mutually agree upon if such index is no longer published or otherwise available.

1.1.39 "EVENTS OF DEFAULT" shall have the meaning set forth in Section 13.1.

1.1.40 "EXCLUDED TRANSFERS" shall have the meaning set forth in subsection 4.6.2.

1.1.41 "EXISTING EXPIRATION DATE" shall have the meaning set forth in the preamble to this Lease.

1.1.42 "EXISTING LEASE" shall have the meaning set forth in the preamble to this Lease.

1.1.43 "EXTENDED TIME" shall have the meaning set forth in Section 15.15.

1.1.44 "FAIR MARKET RENTAL VALUE" shall have the meaning set forth in subsection 4.4.1.

1.1.45 "FINAL PLANS AND SPECIFICATIONS" shall have the meaning set forth in subsection 5.3.3.

1.1.46 "FINANCING EVENT" shall have the meaning set forth in subsection 12.1.1.

1.1.47 "FORCE MAJEURE" shall mean any inability of a party to perform any non-monetary obligations under this Lease due to fire or other casualty, acts of God, civil

riots, acts or terrorism, embargo, governmental order, governmental moratoria, third party restraining order or injunction (filed by a plaintiff other than Lessee, an affiliate of Lessee, County or the California Coastal Commission), industry wide strikes or other similar causes beyond the reasonable control of the party required to perform the subject obligation.

1.1.48 "GROSS ERROR" shall have the meaning set forth in subsection 16.15.4.

1.1.49 "GROSS PROCEEDS" shall have the meaning set forth in subsection 4.8.1.

1.1.50 "GROSS RECEIPTS" shall have the meaning set forth in subsection 4.2.2.2.

1.1.51 "IMPROVEMENTS" means all buildings, structures, fixtures, fences, fountains, walls, paving, parking areas, driveways, walkways, plazas, landscaping, permanently affixed utility systems and other improvements now or hereafter located on the Premises.

1.1.52 "IMPROVEMENT COSTS" shall have the meaning set forth in subsection 4.8.1.1.

1.1.53 "INCOME APPROACH" shall have the meaning set forth in Section 6.5.

1.1.54 "INITIATING PARTY" shall have the meaning set forth in the first paragraph of Article 16.

1.1.55 "INSTITUTIONAL LENDER" shall have the meaning set forth in subsection 12.3.1.

1.1.56 "INSURANCE RENEGOTIATION DATE" shall have the meaning set forth in Section 9.3.

1.1.57 "LATE FEE" shall have the meaning set forth in Section 4.5.

1.1.58 "LEASE" shall mean this Amended and Restated Lease Agreement.

1.1.59 "LEASE YEAR" shall have the meaning set forth in Section 2.1.

1.1.60 "LESSEE" shall have the meaning set forth in the first paragraph of this Lease.

1.1.61 "LESSEE SALE PRICE" shall have the meaning set forth in subsection 11.2.4.

1.1.62 "MAJOR SUBLEASE" shall have the meaning set forth in subsection 11.1.1.

1.1.63 "MAJOR SUBLESSEE" shall have the meaning set forth in subsection 11.1.1.

1.1.64 "MINIMUM REQUIRED RENOVATION AMOUNT" shall have the meaning set forth in subsection 5.9.

1.1.65 "MONTHLY MINIMUM RENT" shall have the meaning set forth in subsection 4.2.1.

1.1.66 "NET AWARDS AND PAYMENTS" shall have the meaning set forth in Section 6.7.

1.1.67 "NET PROCEEDS SHARE" shall have the meaning set forth in Section 4.6.

1.1.68 "NET REFINANCING PROCEEDS" shall have the meaning set forth in subsection 4.8.5.

1.1.69 "NET TRANSFER PROCEEDS" shall have the meanings set forth in subsections 4.8.1 and 4.8.2.

1.1.70 "NOTICE OF COMPLETION" shall have the meaning set forth in subsection 5.5.7.

1.1.71 "OPTION AGREEMENT" shall have the meaning set forth in the preamble to this Lease.

1.1.72 "PARTIAL TAKING" shall have the meaning set forth in Section 6.5.

1.1.73 "PAYMENT BOND" shall have the meaning set forth in subsection 5.4.3.2.

1.1.74 "PERCENTAGE RENT" shall have the meaning set forth in subsection 4.2.2.

1.1.75 "PERFORMANCE BOND" shall have the meaning set forth in subsection 5.4.3.1.

1.1.76 "PERMITTED USES" shall have the meaning set forth in Section 3.1.

1.1.77 "PREMISES" shall have the meaning set forth in the preamble to this Lease.

1.1.78 "PRIME RATE" shall have the meaning set forth in subsection 4.4.5.

1.1.79 "PROPOSED TRANSFER" shall have the meaning set forth in subsection 11.2.4.

1.1.80 "PUBLIC WORKS DIRECTOR" shall mean the Director of the Department of Public Works of the County of Los Angeles.

1.1.81 "PURCHASE MONEY NOTE" shall have the meaning set forth in subsection 4.7.2.

1.1.82 "REDEVELOPMENT WORK" shall have the meaning set forth in Section 5.1.

1.1.83 "RENEGOTIATION DATES" shall have the meaning set forth in Section 4.4.

1.1.84 "REPLY" shall have the meaning set forth in Section 16.5.

1.1.85 "REQUIRED COMPLETION DATE" shall have the meaning set forth in Section 5.1.

1.1.86 "RESPONDING PARTY" shall have the meaning set forth in the first paragraph of Article 16.

1.1.87 "REVERSION AMENDMENT" shall have the meaning set forth in Section 5.1.

1.1.88 "SECTION" shall mean a section of this Lease.

1.1.89 "SECURITY DEPOSIT" shall have the meaning set forth in Section 7.1.

1.1.90 "SHALL" and "WILL" are mandatory and the word "MAY" is permissive.

1.1.91 "STATE" shall mean the State of California.

1.1.92 "STATEMENT OF POSITION" shall have the meaning set forth in subsection 16.6.

1.1.93 "SUBLEASE" shall have the meaning set forth in subsection 11.1.1.

1.1.94 "SUBLESSEE" shall have the meaning set forth in subsection 11.1.1.

1.1.95 "SUBSECTION" shall mean a subsection of a Section of this Lease.

1.1.96 "SUBSEQUENT RENOVATION" shall have the meaning set forth in Section 5.9.

1.1.97 "SUBSEQUENT RENOVATIONS FUND" shall have the meaning set forth in Section 5.10.

1.1.98 "SUBSEQUENT RENOVATION PLAN" shall have the meaning set forth in Section 5.9.

1.1.99 "TERM" shall have the meaning set forth in Section 2.1.

1.1.100 "TIME OF THE ESSENCE" shall have the meaning set forth in Section 15.2.

1.1.101 "UNINSURED LOSS" shall have the meaning set forth in Section 10.2.

1.1.102 "WRITTEN APPRAISAL EVIDENCE" shall have the meaning set forth in subsection 16.7.

1.2 Lease. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, County hereby leases to Lessee, and Lessee hereby leases and hires from County, an exclusive right to possess and use, as tenant, the Premises for the Term (as hereinafter defined) and upon the terms and conditions and subject to the requirements set forth herein. This Lease fully amends, restates and supercedes the Existing Lease.

1.2.1 As-Is. Lessee acknowledges that (1) it is currently in possession of the Premises, (2) the Improvements now existing on the Premises were constructed by the lessee under the Existing Lease with contractors selected by them, and (3) the lessee under the Existing Lease has occupied, managed and operated the Premises since 1964. Except as provided in subsection 1.2.2, Lessee accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease, at the time of the Effective Date, and Lessee hereby represents that it has performed all investigations necessary, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS WITH ALL FAULTS". Lessee hereby accepts the Premises on an "AS IS WITH ALL FAULTS" basis and, except as expressly set forth in this Lease, Lessee is not relying on any representation or warranty of any kind whatsoever, express or implied, from County or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Premises and/or any Improvements located thereon, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises and/or any Improvements located thereon, including, but not limited to, the structural elements, foundation, roof, protections against ocean damage, erosion, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, HVAC, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land and within the Improvements and within each space therein, (ii) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises and/or any Improvements located thereon, (iv) the development potential of the Premises, and the use, habitability,

merchantability or fitness, or the suitability, value or adequacy of the Premises and/or any Improvements located thereon for any particular purpose, (v) the zoning or other legal status or entitlement or lack thereof of the Premises or any other public or private restrictions on use of the Premises, (vi) the compliance of the Premises and/or any Improvements located thereon with any applicable codes, laws, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions of County, City, State, the United States of America, the California Coastal Commission and/or any other governmental or quasi-governmental entity ("Applicable Laws") or of any other person or entity (including, without limitation, relevant provisions of the Americans with Disabilities Act ("ADA")), (vii) the presence of any underground storage tank or hazardous materials on, under or about the Premises or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any Improvements, (ix) the condition of title to the Premises, and (x) the economics of the operation of the Premises and/or any Improvements located thereon.

1.2.2 Title. County represents that County owns fee title to the Premises and that County has authority to enter into this Lease. Lessee hereby acknowledges the title of County and/or any other public entity or agency having jurisdiction thereover, in and to the Premises, and covenants and agrees never to contest or challenge the extent of said title, except as is necessary to ensure that Lessee may occupy the Premises and/or encumber the leasehold estate pursuant to the terms and conditions of this Lease.

## 2. TERM.

2.1 Term. Unless terminated sooner in accordance with the provisions of this Lease, the term of this Lease (the "Term") shall continue until and expire at 11:59 p.m. on January 31, 2063. Each twelve (12) month period during the Term from February 1 through January 31 of the succeeding calendar year is referred to herein as a "Lease Year."

2.2 Appraisal of Extension of Original Term. The parties hereto agree and acknowledge that prior to the Effective Date, County has conducted an appraisal of the thirty-nine (39) year extension of the Term from January 31, 2024 to January 31, 2063 as provided herein, and that the Extension Fee payable under the Option Agreement is not less than the appraised value of the Lease extension provided herein.

2.3 Ownership of Improvements During Term. Until the expiration of the Term or sooner termination of this Lease, and except as specifically provided herein, Lessee shall own all Improvements now existing and constructed by Lessee or its predecessors (or upon the expiration or termination of Subleases, the Improvements constructed by Sublessees) or hereafter constructed by Lessee upon the Premises (or upon the expiration or termination of Subleases, the Improvements hereafter constructed by Lessee's Sublessees), and all alterations, additions, or betterments made thereto by Lessee.

2.4 Reversion of Improvements. Upon the expiration of the Term or sooner termination of this Lease, whether by cancellation, forfeiture or otherwise:



2.4.1 County's Election to Receive Improvements. At the election of County, all structures, buildings, Improvements and all alterations, additions, and betterments thereto, and all other Improvements made to or upon the Premises shall remain upon and be surrendered with the Premises as part thereof and title thereto shall vest in County without compensation therefor to Lessee. Lessee shall not be responsible for any removal by an easement holder of any Improvements that may be owned by and constructed on the Premises by such easement holder pursuant to an easement granted to such easement holder by County. Nothing contained herein shall be construed to deny or abrogate the right of Lessee, prior to the expiration of the Term or termination of this Lease, to receive any and all proceeds which are attributable to the Condemnation of business installations, Improvements, structures and buildings belonging to Lessee immediately prior to the taking of possession by the Condemnor as said rights are set forth in Article 6 of this Lease, or to remove any furniture or equipment not intended to be permanently affixed to, or reasonably necessary for the operation of, the Premises, any signage identifying Lessee or a Sublessee (as opposed to other signage used in the operation of the Premises and associated Improvements), or any personal property, upon the expiration of the Term or earlier termination of this Lease or at any time during the Term, subject to Lessee's obligations under this Lease to use the Premises for the Permitted Uses. In addition, nothing contained herein shall be construed to deny a Sublessee any right that such Sublessee may have under its Sublease to remove any so-called Sublessee "trade-dress" items installed in or on the subleased premises by such Sublessee. Lessee shall be responsible for repairing (or causing its Sublessees to repair) any damage to the Improvements on the Premises incurred in connection with the removal from the Premises of any of the items described in this subsection 2.4.1.

2.4.2 Duty to Remove. No earlier than eleven (11) years, and no later than ten (10) years prior to the expiration of the Term, Lessee shall deliver to County a report prepared by a construction and demolition expert approved by County, such approval not to be unreasonably withheld or delayed, which report details and estimates the cost of removing all Improvements on the Premises at the expiration of the Term. County may give written notice at any time, no later than five (5) years prior to the expiration of the Term or concurrently upon any earlier termination, of County's election to require Lessee to remove, at the sole cost and expense of Lessee, not later than the expiration of the Term or earlier termination of this Lease, all or any portion of the at grade, above grade and below grade structures, buildings and Improvements of any kind whatsoever placed or maintained on the Premises, whether placed thereon or maintained by Lessee or others, including, but not limited to, concrete foundations, pilings, structures and buildings. If County requires Lessee to remove the Improvements, then Lessee shall, upon the expiration or termination of this Lease, immediately restore, and quit, and peacefully surrender possession of, the Premises to County in good, usable and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps. Lessee shall not be required to remove any Improvements that are owned by third parties and located on the Premises pursuant to easements encumbering the fee title to the Premises and as to which neither County nor Lessee has a right to require the removal of such easement Improvements. Lessee shall have the right, by written notice to County not later than thirty (30) days prior to the expiration of the Term, to extend the date by which Lessee must complete the Improvement removal and Premises surrender

obligations under this subsection 2.4.2 and/or the Lessee's removal obligations under subsection 2.4.4 below to a date not more than sixty (60) days after the expiration of the Term; provided, however, that all of the Lessee's obligations and liabilities under the Lease (other than the obligation to affirmatively operate the Premises) shall be applicable during such additional period, including without limitation, the Lessee's obligations with respect to insurance and indemnification, and Lessee's obligation to pay County compensation for such period in an amount equal to the Monthly Minimum Rent rate in effect immediately prior to the expiration of the Term multiplied by 1.333.

If Lessee has received written notice of County's election to require Lessee to remove Improvements hereunder, Lessee shall, no later than the date which is ninety (90) days after the date upon which Lessee received such notice from County, provide County with a letter of credit, bond or other security or deposit of funds, in form, issuer and amount satisfactory to County, to secure the discharge of Lessee's removal and restoration obligations pursuant to this subsection. The amount of the letter of credit, bond or other security or deposit shall be equal to the greatest of (i) the estimated cost to remove the Improvements as set forth in the report described above (the "Estimated Costs") multiplied by 1.5, (ii) the Estimated Costs adjusted to reflect the percentage change in the ENR Index over the five (5) year period immediately preceding the date of Lessee's delivery of the letter of credit, bond, or other security or deposit, or (iii) the Estimated Costs adjusted to reflect the percentage change in the CPI Index over the five (5) year period immediately preceding the date of Lessee's delivery of the letter of credit, bond, or other security or deposit. If County fails to elect to require Lessee to remove the buildings, structures and Improvements on the Premises as provided above, then upon the expiration of the Term, or earlier termination of the Lease, Lessee shall turn over the Premises to County in good and workmanlike condition, consistent with the condition of other buildings, structures and Improvements of comparable age and construction quality.

2.4.3 County's Right to Remove Improvements. Should Lessee fail to so remove said structures, buildings and Improvements and restore the Premises, County may sell, remove or demolish the same, in event of which sale, removal or demolition Lessee shall reimburse County for any cost or expense thereof in excess of any funds received by County through the security above provided and any consideration received by County as a result of such sale, removal or demolition.

2.4.4 Duty to Remove Equipment, Etc. No later than the expiration of the Term or sooner termination of this Lease (or within the additional sixty (60) day period described in subsection 2.4.2), Lessee shall in any event remove at its cost and expense such furniture, equipment and personal property as are not firmly affixed to said structures, buildings and Improvements or reasonably necessary for the orderly operation of the Premises. Should Lessee fail to so remove said furniture, equipment and personal property within said period, and said failure continues for ten (10) days after written notice from County to Lessee, Lessee shall lose all right, title and interest in and thereto, and County may elect to keep the same upon the Premises or to sell, remove, or demolish the same, in event of which sale, removal, or demolition Lessee shall reimburse County for its Actual Costs incurred in connection with such sale, removal or demolition in

excess of any consideration received by County as a result of said sale, removal or demolition.

2.4.5 Title to Certain Improvements Passes to County; Lessee to Maintain.

As between County and Lessee, title to all utility lines, transformer vaults and all other utility facilities constructed or installed by Lessee upon the Premises shall vest in County upon construction or installation to the extent that they are not owned by a utility. Notwithstanding the foregoing sentence, as between Lessee and County, Lessee shall be responsible for performing (or causing the appropriate utility provider to perform) the maintenance, repair and replacement, if and as needed, of such utility lines, transformer vaults and all other utility facilities during the Term.

3. USE OF PREMISES.

3.1 Specific Primary Use. The Premises shall be used by Lessee for the operation and management of (i) a retail shopping center, and (ii) such other related and incidental uses as are specifically approved by County, which approval shall not be unreasonably withheld, conditioned or delayed by County as long as such other related or incidental use is consistent with the operation of a first-class retail shopping center (collectively, the foregoing shall be referred to herein as the "Permitted Uses"). County acknowledges that it has approved as related and incidental uses the uses currently in operation on the Premises pursuant to the Subleases that are currently in effect for the Premises and that have been approved by County. Except as specifically provided herein, the Premises shall not be used for any purpose other than the Permitted Uses, without the prior written consent of County. County makes no representation or warranty regarding the continued legality of the Permitted Uses or any of them, and Lessee bears all risk of an adverse change in Applicable Laws.

3.2 Prohibited Uses. Notwithstanding the foregoing:

3.2.1 Nuisance. Lessee shall not conduct or permit to be conducted any private or public nuisance on or about the Premises, nor commit any waste thereon. No rubbish, trash, waste, residue, brush, weeds or undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon any portion of the Premises, except in appropriate receptacles intended for such purposes, nor shall any portion of the Premises be maintained so as to render said Premises a fire hazard or unsanitary, unsightly, offensive, or detrimental nor shall any similar activity be permitted on any other portion of the Premises or on any adjacent public street or adjacent property.

3.2.2 Restrictions and Prohibited Uses. Without expanding upon or enlarging the Permitted Uses of the Premises as set forth in this Lease, the following uses of the Premises are expressly prohibited:

3.2.2.1 The Premises shall not be used or developed in any way which is inconsistent with any Applicable Laws;

3.2.2.2 The Premises shall not be used or developed in any way in a manner inconsistent with the Permitted Uses. Without limiting the foregoing, no part of the Premises shall be used by any person for any adult entertainment purposes, as

such term refers to graphic, explicit and/or obscene depictions of sexual activity; with respect to any future use of the Premises for the operation of a motion picture theatre (which use it is hereby agreed shall be subject to the prior approval of County in accordance with Section 3.1 above), the restriction in this subsection 3.2.2.2 shall prohibit the exhibition of "X"-rated (as that term is used as of the Effective Date or its equivalent at the time) or other pornographic motion pictures, but shall not prohibit the exhibition of "R" rated motion pictures (as that term is used as of the Effective Date or its equivalent at the time);

3.2.2.3 No improvement on the Premises shall be permitted to fall into disrepair and all Improvements shall at all times be kept in good condition and repair consistent with the requirements of Section 10.1 of this Lease;

3.2.2.4 No condition shall be permitted to exist upon the Premises which shall induce, breed or harbor infectious plant diseases, rodents, or noxious insects and Lessee shall take such measures as are appropriate to prevent any conditions from existing on the Premises which create a danger to the health or safety of any persons residing or working at, or persons patronizing, the Premises; this subsection 3.2.2.4 shall not be construed to prevent Lessee from using the Premises for normal restaurant and supermarket operations, provided that Lessee takes (or causes to be taken) all actions or measures required to comply with this subsection 3.2.2.4;

3.2.2.5 Without the prior written approval of Director, no antennae or other device for the transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used or maintained by Lessee outdoors above ground on any portion of the Premises, whether attached to an improvement or otherwise; Director shall not unreasonably withhold its approval of the installation of one or more satellite antennae on the roof of the buildings as long as such antennae do not extend above the roofline or parapet at the top of the building perimeter, are screened from view in a manner acceptable to Director and do not interfere with other electromagnetic transmission in the Marina;

3.2.2.6 No tools, equipment, or other structure designed for use in boring for water, oil, gas or other subterranean minerals or other substances, or designed for use in any mining operation or exploration, shall hereafter be erected or placed upon or adjacent to the Premises, except as is necessary to allow Lessee to perform its maintenance and repair obligations pursuant to this Lease;

3.2.2.7 No adverse environmental condition in violation of Applicable Laws shall be permitted to exist on any portion of the Premises, nor shall any toxic or hazardous wastes be permitted to be generated, treated, stored, disposed of, or otherwise deposited in or on or allowed to emanate from the Premises or any portion thereof, including, without limitation, into the subsurface waters thereof; provided, however, that toxic or hazardous substances may be stored or used, so long as such storage and use is (a) ancillary to the ordinary course of business of an otherwise Permitted Use with the intent that such substances will be used in the ordinary course

of business, and (b) conducted in compliance with all Applicable Laws; and provided, further, that the existing environmental conditions set forth in that certain Limited Phase II Environmental Sampling Report dated September 8, 2003 prepared by Kleinfelder, Inc. shall not constitute a breach or default by Lessee of this Lease as long as upon the execution and delivery of this Lease Lessee promptly and diligently prosecutes the remediation of such conditions; Lessee may delay the remediation of asbestos-containing materials currently existing in individual units of the Improvements until the applicable unit is surrendered by the existing Sublessee or such unit is renovated or refurbished, provided that the remediation described in this subsection 3.2.2.7 shall in all events be completed as, and not later than when, required until Applicable Laws; and

3.2.2.8 The Premises shall not be used for fuel sales or residential purposes.

3.3 Active Public Use. The parties acknowledge that the ultimate objective of this Lease is the complete and continuous use of the facilities and amenities located in Marina del Rey by and for the benefit of the public, without discrimination as to race, gender or religion, along with the generation and realization of revenue therefrom. Accordingly, Lessee agrees and covenants that it will operate the Premises fully and continuously (other than during periods when Lessee is prevented from doing so due to Force Majeure or reasonable periods during which the applicable Improvements are under construction or alteration) in light of these objectives, consistent with the operation of a retail facility, and that it will use commercially reasonable efforts so that County may obtain maximum revenue therefrom as contemplated by this Lease. In the event of any dispute or controversy relating hereto, this Lease shall be construed with due regard to the aforementioned objectives.

3.4 Days of Operation. The Improvements on the Premises shall be open every day of the year. Any changes in the days and/or hours of operation of the Improvements on the Premises shall be subject to the written approval of County. Lessee shall not be obligated to remain open for business to the public on holidays on which other comparable retail shopping centers are closed for business (or, with respect to any portion of the Improvements occupied for banking purposes, on holidays on which banks are closed for business).

3.5 Signs and Awnings. Any and all art, displays, identifications, monuments, awnings, advertising signs and banners which are placed on, or are visible from, the exterior of the Premises shall be only of such size, design, wording of signs and color as shall have been specifically submitted to and approved by Director (and to the extent required under then applicable Law, the Design Control Board), whether pursuant to Article 5 of this Lease or otherwise, in writing, prior to the erection or installation of said art, sign, display, identification, monument, awning or advertising sign.

3.6 Compliance with Regulations. Lessee shall comply with all Applicable Laws and shall pay for and maintain any and all licenses and permits related to or affecting the use, operation, maintenance, repair or improvement of the Premises. Without limitation of the foregoing, Lessee shall comply with (i) all conditions and requirements of Coastal Development Permit No(s). \_\_\_\_\_ **[PRIOR TO LEASE EXECUTION INSERT COASTAL**

**DEVELOPMENT PERMIT NO(S). ISSUED FOR THE REDEVELOPMENT WORK],** which conditions and requirements are attached to this Lease as Exhibit E and incorporated herein by this reference, and (ii) all public access requirements of the Marina del Rey Local Coastal Program, as amended from time to time.

3.7 Rules and Regulations. Lessee agrees to comply with such other reasonable rules and regulations governing the use and occupancy of the Premises as may be promulgated by County from time to time for general applicability on a non-discriminatory basis to other commercial shopping center facilities in Marina del Rey, and delivered in writing to Lessee.

3.8 Reservations. Lessee expressly agrees that this Lease and all rights hereunder shall be subject to all prior encumbrances, reservations, licenses, easements and rights of way in, to, over or affecting the Premises for any purpose whatsoever that are existing as of the date hereof and that either (i) are of record, (ii) have been disclosed to Lessee in writing or are otherwise known to Lessee, (iii) would be apparent or discoverable by an ALTA survey of the Premises, or (iv) are otherwise referenced in this Lease.

Without limiting the foregoing, Lessee expressly agrees that this Lease and all rights hereunder shall be subject to all prior matters of record and the rights of County and/or City existing as of the Effective Date or otherwise disclosed to or known to Lessee, as their interests may appear, to install, construct, maintain, service and operate sanitary sewers, public roads and sidewalks, fire access roads, storm drains, drainage facilities, electric power lines, telephone lines and access and utility easements across, upon or under the Premises, together with the right of County or the City to convey such easements and transfer such rights to others.

Without limiting the foregoing, County reserves the right to install, repair and maintain signs and sidewalks on the Premises at the intersection of Lincoln Boulevard and Fiji Way and at the intersection of Lincoln Boulevard and Mindanao Way in the areas shown on Exhibit D attached to this Lease. County shall have the non-exclusive right to use such areas for the continued use and maintenance of signs that are consistent with the County's sign plan for the Marina. For so long as County continues to maintain signs pursuant to this paragraph, County shall install and maintain landscaping in such areas consistent with Lessee's landscaping. If during the Term County removes all of its signs and abandons use of such areas for sign purposes for a period of thirty (30) days, then County's right to install and maintain signs on the Premises in such areas shall cease and Lessee shall have full use of such areas and shall assume the maintenance of landscaping installed by County thereon. If County abandon's that portion of the areas depicted on Exhibit D that it has used for the installation of sidewalks, then County, at the option of Lessee, at County's sole cost and expense, shall remove such sidewalks and landscape such portion of the Premises to conform to the landscaping on the rest of the Premises.

#### 4. PAYMENTS TO COUNTY.

4.1 Net Lease. The parties acknowledge that the payments to be made by Lessee under this Lease are intended to be absolutely net to County. The rent and other sums to be paid to County hereunder are not subject to any demand, set-off or other withholding. Except as specifically set forth herein, Lessee shall be solely responsible for all capital costs (including, without limitation, all structural and roof repairs or replacements) and operating expenses

attributable to the operation and maintenance of the Premises, including without limitation the parking areas included within the Premises.

4.1.1 Utilities. In addition to the rental charges as herein provided, Lessee shall pay all utility and service charges for furnishing water, power, sewage disposal, light, telephone service, garbage and trash collection and all other utilities and services, to said Premises.

4.1.2 Taxes and Assessments. Lessee agrees to pay before delinquency all lawful taxes, assessments, fees, or charges which at any time may be levied by the State, County, City or any tax or assessment levying body upon any interest in this Lease or any possessory right which Lessee may have in or to the Premises covered hereby or to the Improvements thereon for any reason, as well as all taxes, assessments, fees, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by it in, on or about the Premises. Lessee's obligation to pay taxes and assessments hereunder shall include but is not limited to the obligation to pay any taxes and/or assessments, or increases in taxes and/or assessments arising as a result of the grant to Lessee of the Option or Lessee's exercise thereof. Lessee shall have the right to contest the amount of any assessment imposed against the Premises or the possessory interest therein; provided, however, the entire expense of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Lessee.

The parties acknowledge that the Premises are and shall continue to be subject to possessory interest taxes, and that such taxes shall be paid by Lessee. This statement is intended to comply with Section 107.6 of the Revenue and Taxation Code. Lessee shall include a statement in all Subleases to the effect that the interests created therein may also be subject to possessory interest taxes, and that the Sublessee shall be responsible for any and all possessory interest taxes on the Sublessee's interest; however, Lessee acknowledges that the payment of such possessory interest taxes is the ultimate responsibility of Lessee.

4.2 Rental Payments. Throughout the Term, for the possession and use of the Premises granted herein, Lessee shall pay County a monthly amount equal to the greater of (a) Monthly Minimum Rent or (b) Percentage Rent.

4.2.1 Annual Minimum Rent and Monthly Minimum Rent. Lessee shall pay to County the minimum rent described in this subsection 4.2.1 (subject to adjustment pursuant to Sections 4.2.3 and 4.4 below) during each year of the Term (the "Annual Minimum Rent"). Annual Minimum Rent shall be payable by Lessee to County on a monthly basis in equal installments of one-twelfth (1/12th) of the Annual Minimum Rent (the "Monthly Minimum Rent"). During the period from the Effective Date through the day preceding the fifth (5<sup>th</sup>) anniversary of the Effective Date, the Annual Minimum Rent shall be Seven Hundred Fifty Thousand Dollars (\$750,000.00) per year. From and after the fifth (5<sup>th</sup>) anniversary of the Effective Date, the Annual Minimum Rent shall be as set forth in Sections 4.2.3 and 4.4 below.

4.2.2 Percentage Rent. For the purposes of this Lease, "Percentage Rent" for any given month or year shall be defined as the sum of the amount set forth in subsection 4.2.2.1 below with respect to Gross Rent Revenues and the amount set forth in subsection 4.2.2.2 below with respect to Gross Receipts. Within fifteen (15) days after the close of each and every calendar month of the Term, Lessee shall file a report of Gross Rent Revenues and Gross Receipts and pay to County a sum equal to the total Percentage Rent payable under subsections 4.2.2.1 and 4.2.2.2 for such previous month, less the amount of Monthly Minimum Rent paid for such previous month as provided herein.

4.2.2.1 Gross Rent Revenues. Lessee shall be obligated to pay to County sixteen percent (16%) of Gross Rent Revenues (as defined below) with respect to the lease or occupancy of retail stores (other than restaurants), office space, guest rooms, meeting rooms and other non-retail areas, other than those activities set forth in subsection 4.2.2.2 below. "Gross Rent Revenues" shall mean all fixed, minimum, base, percentage or other rents of any kind, payments, charges, fees, expense reimbursements and other compensation payable to Lessee by any Sublessee, licensee, permittee or concessionaire, whether collected or accrued, from or relating to any business, use, or occupancy on or of the Premises or the Improvements, or any part thereof. Gross Rent Revenues shall expressly include, without limitation, all operating expense, property tax and insurance premium reimbursements, fees or other charges payable to Lessee, but shall exclude reimbursements paid to Lessee for costs incurred by Lessee for maintenance of common areas, including parking areas (but not property taxes or insurance premiums), and reimbursements paid to Lessee for common advertising and similar promotional activities for the shopping center as a whole, as long as not less than eighty percent (80%) of all tenants participate in the cost of such advertising and promotional activities; provided, that if any amounts payable to Lessee for such common area maintenance or advertising or promotional activities exceed the actual third party out-of-pocket costs incurred by Lessee for such matters, then such excess shall be included in Gross Rent Revenues; and provided, further, that any expenses incurred by Lessee for services or goods rendered or supplied by any affiliate of Lessee shall not exceed the fair market value of such services or goods. Notwithstanding any contrary provision of this subsection 4.2.2.1, the Percentage Rent payable with respect to property tax and insurance premium reimbursements shall be calculated based on twenty percent (20%) of such property tax and insurance premium reimbursements in lieu of the sixteen percent (16%) amount otherwise applicable to other items of Gross Rent Revenues under this subsection 4.2.2.1.

Lessee represents that all current Subleases of the Premises require each applicable Sublessee to reimburse Lessee for property taxes and insurance expenses incurred by Lessee with respect to the Premises and Improvements. If Lessee hereafter enters into any Sublease (or amendment or modification of an existing Sublease) that provides for the direct payment by a Sublessee of property taxes or insurance premiums that Lessee currently customarily pays and receives reimbursement from Sublessees, then for purposes of the calculation of Gross Rent Revenues, such direct property tax and/or insurance premium payments shall be included in Gross Rent Revenues as if Lessee had paid the expense and received a



reimbursement in the same general manner as set forth in the current Subleases in effect as of the Effective Date. Lessee shall be required to obtain the advance written approval from Director of any items to be excluded from Gross Rent Revenues, which approval shall be based on the terms and provisions of this subsection 4.2.2.1.

Gross Rent Revenues shall not include amounts reimbursed to Lessee for the Cost of each Sublessee's submetered electricity, water and gas for such Sublessee's space, provided that (1) each Sublessee's obligation to reimburse Lessee for such utility charges is separate and apart from such Sublessee's obligation to pay rent for its occupancy of the Premises; (2) the reimbursed sum is in an amount equal to the Cost of the Sublessee's usage of such utilities; and, (3) the receipt is actually credited against the cost of the Sublessee's usage of such utilities. For the purpose of the foregoing sentence, the "Cost" of the Sublessee's usage of utilities shall mean the actual costs incurred by Lessee, exclusive of overhead and general and administrative expenses, in paying the portion of the respective utility bill that is allocable to the Sublessee based on such Sublessee's submetered consumption of such utilities, and in paying the portion of any third party submeter reading and service charge to each submeter that is actually read and a direct allocation of the submeter service charge to each such submeter that is serviced. County shall have the right to approve all submeters and to challenge the legitimacy or amount of any Cost, and all disputes regarding such County approvals or challenges, if not resolved by the parties within thirty (30) days after notice to Lessee of such disapproval or challenge, shall be resolved by arbitration pursuant to Article 16 of this Lease.

If Lessee, or any affiliate of Lessee, directly conducts any business from the Premises and/or Improvements that, if conducted by a third party Sublessee, would generate Gross Rent Revenues under this subsection 4.2.2.1, then Gross Rent Revenues shall be deemed to include the Gross Rent Revenues that Lessee would have received from a third party Sublessee if the portion of the Premises and/or Improvements used or occupied for such purposes had been leased by Lessee to a third party Sublessee on fair market rental terms.

**4.2.2.2 Gross Receipts.** Lessee shall be obligated to pay to County the following respective percentages of Gross Receipts (as defined below) from or with respect to the following activities on, or uses of, the Premises or Improvements:

I. **THREE AND ONE-HALF PERCENT (3.5%)** of Gross Receipts from the operation of a restaurant; for purposes hereof, the operation of a restaurant shall mean a business in which the primary use or operation is the sale of food, food products, alcoholic beverages and/or non-alcoholic beverages that are served on the Premises, or prepared or sold on the Premises and served off the Premises; provided, however, that the operation of a supermarket, grocery store, specialty food market, convenience food store or beverage store shall not be considered a restaurant, but instead shall be subject to the Percentage Rent provisions of subsection 4.2.2.1 above;

II. **TWENTY-FIVE PERCENT (25%)** of Gross Receipts payable to Lessee or a Sublessee in the form of commissions or other compensation by a third

party for the right to install or operate vending or service machines or devices, including without limitation, pay telephones, or for the right to supply cable, internet, satellite, telecommunication, parking (including, without limitation valet) or other services ("Other Services"), or FIVE PERCENT (5%) of any Gross Receipts generated by the operation of such vending or services machines that are owned by Lessee or a Sublessee, or for Gross Receipts received by Lessee or a Sublessee for the supply of such Other Services;

III. FIVE PERCENT (5%) of Gross Receipts from all other activities on the Premises other than the lease or occupancy of Improvements described in subsection 4.2.2.1 above or the activities described in paragraph I and II or this subsection 4.2.2.2.

"Gross Receipts" shall mean the gross amount of all money, receipts, sales price, fees, commissions, compensation, or other things of value, made or earned in connection with the operation of any business, use, occupation or any combination thereof, originating, transacted or performed, in whole or in part, on or in the Premises or the Improvements, by Lessee and/or all its assignees, Sublessees, licensees, permittees or concessionaires. In the calculation of Gross Receipts, the following provisions shall be applicable:

(1) Except as otherwise set forth herein, there shall be no deduction from Gross Receipts for any overhead or cost or expense of operation, such as, without limitation, salaries, wages, costs of goods, interest, debt amortization, rent credit, collection costs, insurance and taxes. Lessee shall be entitled to exclude from Gross Receipts the fees or charges paid to credit card companies in connection with customer purchases made by use of a credit card.

(2) Gross Receipts shall not include direct taxes imposed upon the consumer and collected therefrom, such as, without limitation, retail sales or excise taxes.

(3) Gross Receipts must include the customary charges for any services, goods, rentals or facilities provided by Lessee or its Sublessees, assignees, licensees, concessionaires or permittees, less any discounts, allowances or adjustments made to customers on a bona fide arms-length basis. Bona fide bad debts qualifying under applicable federal income tax law as "bad debt" may be deducted from Gross Receipts to the extent that such amounts have been previously reported as Gross Receipts; however, there shall be no deduction for bad debts based on past experience or transfer to a bad debt reserve. Subsequent collection of bad debts previously deducted or not reported as Gross Receipts shall be included in Gross Receipts at the time they are collected.

(4) Gross Receipts shall not include any of the following items:

a. goods returned to suppliers or which are delivered for resale (as opposed to delivery) to another retail location or to a warehouse or to

any retailers without profit, where such returns or deliveries are made solely for the convenient operation of the business and not for the purpose of consummating a sale made in, about or from the Premises;

b. an amount equal to the cash refunded or credit allowed on merchandise returned by customers, but only to the extent that the sales relating to such merchandise were made in, about or from the Premises; provided that whenever a credit slip is accepted as payment for goods or services, the amount of credit shall be included in Gross Receipts;

c. sales of fixtures, equipment or property which are not stock in trade;

d. receipts from insurance claims other than rental interruption or business interruption insurance;

e. interest earned on funds arising from the Premises or the use thereof, deposited or maintained in banks or similar financial institutions;

f. tips and gratuities paid to employees;

g. meals sold or given to employees of Tenant or complimentary meals offered for promotional purposes, but the amounts excluded under this paragraph (g) in connection with a particular business operation shall not exceed two percent (2%) of Gross Receipts from such business operation;

h. receipts from vending machines used solely by employees of the business operation;

i. interest or other charges paid by customers of Sublessees for the extension of credit; and

j. the sales of promotional items by Sublessees at cost.

It is understood that Article 3 of this Lease provides for the Permitted Uses of the Premises and that the percentage categories listed above are no way intended to expand or modify the Permitted Uses. Director, by Policy Statement and with the approval of Lessee, Auditor-Controller and County Counsel, has interpreted and may further interpret the percentage categories as set forth in this subsection 4.2.2, with such determinations and interpretations to be a guideline in determining the appropriate categories.

4.2.2.3 Other Activities. If Director determines that a percentage of Gross Rent Revenues or Gross Receipts is not applicable to a particular activity not described above, although permitted hereunder, Director and Lessee shall mutually establish a minimum monthly payment to County as payment for the privilege of engaging therein, which shall remain effective until the next Renegotiation Date. Said minimum monthly amount shall be reasonable in accordance with the revenue

generated by such activity and shall be included in Percentage Rent, as determined hereunder, in lieu of a percentage of Gross Receipts therefor.

4.2.2.4 Accounting Records and Procedures. Lessee agrees to and shall comply with, and shall cause all of its Sublessees, licensees, permittees and concessionaires to agree to and comply with, the recordkeeping and accounting procedures, as well as the inspection and audit rights granted to County, set forth in Article 14 of this Lease.

4.2.2.5 Excess Payments Credit. If rent payments actually made by Lessee in a particular Lease Year exceed the total rentals actually due for that year as computed on an annual basis at the end of each Lease Year, Lessee shall be permitted to credit that excess amount ("Excess Percentage Rent Payment") against the succeeding monthly installments of Percentage Rent otherwise due under this subsection 4.2.2 until such time as the entire Excess Percentage Rent Payment has been recouped. If Lessee makes an Excess Percentage Rent Payment in the final Lease Year of the Term, County shall refund such amount to Lessee within thirty (30) days of its discovery and verification of such overpayment.

4.2.2.6 Interest; Etc. Interest, service or late charges collected in conjunction with a transaction, sale or activity of Lessee or Sublessee shall be reported in the same percentage category as the transaction, sale or activity is reported.

4.2.2.7 Policy Statements. Director, by Policy Statement and with the approval of Lessee, Auditor-Controller and County Counsel may further interpret the definition of gross receipts, with such interpretations to be a guideline in implementing the foregoing subsections of this Lease.

4.2.3 Adjustments to Annual Minimum Rent. As of the fifth (5<sup>th</sup>) anniversary of the Effective Date and each successive third (3<sup>rd</sup>) anniversary thereafter until the first Renegotiation Date, and thereafter each third (3<sup>rd</sup>), sixth (6<sup>th</sup>) and ninth (9<sup>th</sup>) anniversaries of each Renegotiation Date (each an "Adjustment Date" and collectively the "Adjustment Dates"), the Annual Minimum Rent shall be adjusted as provided in this subsection 4.2.3. The Annual Minimum Rent shall be adjusted as of each Adjustment Date to the amount which equals seventy five percent (75%) of the average of the total annual rent (i.e., the total Monthly Minimum Rent and Percentage Rent), payable by Lessee to County under Section 4.2 of this Lease during the thirty six (36) month period immediately preceding the Adjustment Date.

4.3 Extension Fee Installment Payments. In consideration of the extension of the Term as provided herein, Lessee shall be required to pay to County the Extension Fee Installment Payments described in Section 4.2 of the Option Agreement. The Extension Fee Installment Payments shall be considered as additional rent payable by Lessee under this lease.

4.4 Renegotiation of Annual Minimum and Percentage Rents. Effective on the twentieth (20<sup>th</sup>) anniversary of the Effective Date, and each subsequent tenth (10<sup>th</sup>) anniversary

thereafter (each a "Renegotiation Date" and collectively, the "Renegotiation Dates"), the Annual Minimum Rent and Percentage Rent shall be readjusted to the Fair Market Rental Value (as defined below) of the Premises.

4.4.1 Fair Market Rental Value. As used herein, "Fair Market Rental Value" shall mean, as of each Renegotiation Date, the Annual Minimum Rent and Percentage Rent, expressed as respective percentages of the Gross Rent Revenue and Gross Receipts categories enumerated in subsection 4.2.2, which the Premises would bring, on an absolute net basis, taking into account the Permitted Uses, all relevant and applicable County policies and all of the other terms, conditions and covenants contained in the Lease, if the Premises were exposed for lease for a reasonable time on an open and competitive market to a lessee for the purpose of the Permitted Uses, where County and the respective tenant are dealing at arms length and neither is under abnormal pressure to consummate the transaction, together with all restrictions, franchise value, earning power and all other factors and data taken into account in accordance with California law applicable from time to time to eminent domain proceedings.

4.4.2 Renegotiation Period. Not more than one (1) year nor less than nine (9) months prior to the Renegotiation Date, Lessee shall deliver to County written notice setting forth Lessee's determination of the Fair Market Rental Value of the Premises. Lessee's notice shall include a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determination, together with such other information regarding such comparable properties or the Premises as Lessee deems relevant or as may be reasonably requested by County. Within one hundred twenty (120) days after receipt of Lessee's notice, if County disagrees with Lessee's determination, County shall deliver to Lessee written notice of such disagreement, together with County's determination of Fair Market Rental Value and a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determination, together with such other information regarding such comparable properties or the Premises as County deems relevant or as may be reasonably requested by Lessee, to the extent available to County. If County fails to deliver to Lessee notice of its disagreement within the aforementioned period and such failure continues for fifteen (15) days after receipt of written notice from Lessee, then Lessee's determination of Fair Market Rental Value shall be binding on County as of the Renegotiation Date; provided, however, that Lessee's notice to County shall conspicuously state in bold faced type that such determination of Fair Market Rental Value shall be binding on County unless County delivers notice of its disagreement within such fifteen (15) day period.

If Lessee fails to deliver the notice described in the first sentence of this subsection, setting forth Lessee's determination of Fair Market Rental Value, and such failure continues for fifteen (15) days after receipt of written notice from County, then County shall submit its determination of Fair Market Rental Value to Lessee, and Lessee shall have fifteen (15) days to deliver to County written notice of Lessee's agreement or disagreement with County's determination. If Lessee fails to deliver notice of such disagreement, then County's determination of Fair Market Rental Value shall be binding on Lessee as of the Renegotiation Date.

4.4.3 Negotiation of Fair Market Rental Value. If County (or Lessee, as the case may be) does so notify Lessee (or County, as the case may be) of its disagreement as provided in subsection 4.4.2, County and Lessee shall have sixty (60) days from the end of the applicable response period in which to agree upon the Fair Market Rental Value for the Premises. County and Lessee shall negotiate in good faith during said sixty (60) day period. If the parties do so agree, they shall promptly execute an amendment to this Lease setting forth the Fair Market Rental Value so jointly determined, to be effective upon the Renegotiation Date. Director shall be authorized to execute any such amendment on behalf of County. During the period of negotiation, Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to the obligation to pay to County Annual Minimum Rent and Percentage Rent at the level existing for the last year of the ten (10) year period then completed.

4.4.4 Arbitration. If County and Lessee fail to reach agreement during the sixty (60) day period set forth in subsection 4.4.3, then, unless the parties agree otherwise, the Fair Market Rental Value of the Premises shall be determined by arbitration as set forth in Article 16 of this Lease and the parties shall execute an amendment to this Lease setting forth the Fair Market Rental Value as determined by arbitration. In order to determine the Fair Market Rental Value of the Premises, the arbitrator shall take into consideration all of the terms, conditions and covenants of this Lease, the earning power and all of the factors and data relating to such value required or proper to be considered in determining the fair rental value of leaseholds under the laws of eminent domain in the State of California. During the period of arbitration, County and Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to Lessee's obligation to pay to County Annual Minimum Rent and Percentage Rent at then existing levels.

4.4.5 Retroactivity. In the event that, pursuant to subsections 4.4.3 or 4.4.4 hereof, the parties execute an amendment to this Lease setting forth the new Annual Minimum Rent and Percentage Rent based on the Fair Market Rental Value, such amendment, if executed prior to the Renegotiation Date, shall be effective as of the Renegotiation Date; if executed after the Renegotiation Date, such amendment shall be retroactive to the Renegotiation Date. In the event that such amendment is executed after the Renegotiation Date, then, within seven (7) days after such execution, Lessee shall pay to County, or County shall at its election pay or credit to Lessee, the difference, if any, between (a) such Fair Market Rental Value for the Premises and (b) the actual Annual Minimum Rent and Percentage Rent paid by Lessee to County, for the period of time from the Renegotiation Date until the date of such payment. Lessee (with respect to overpayments) or County (with respect to underpayments) shall further be entitled to interest on each portion of such payment from each date on which the applicable rental payments were payable under this Lease to the date paid or credited, whichever is applicable, at the following rates:

- (1) the interest rate applicable to the first six (6) months following the Renegotiation Date shall be equal to the average daily rate for the non-restricted funds held and invested by the Treasurer and Tax Collector of Los Angeles County during that period, computed by the Auditor-Controller ("County Pool Rate"); and,

(2) the interest rate applicable to any period of time in excess of six (6) months following the Renegotiation Date shall be the average prime rate of interest published in the Wall Street Journal (the "Prime Rate") plus one percent (1%) for the period between the date which is six (6) months after the Renegotiation Date and the date of payment.

4.5 Payment and Late Fees. Monthly Minimum Rent shall be paid by Lessee in advance. Payments of Minimum Monthly Rent shall be received by County on or before the first day of each calendar month of the Term. Percentage Rent shall be paid by Lessee in arrears. Percentage Rent due, if any, for a given month of the Term shall be received by County on or before the fifteenth day of the calendar month following each month of the Term, calculated as follows: the Lessee shall calculate the total Percentage Rent owed to County for the relevant month of the Term; it shall deduct from said amount the total Monthly Minimum Rent paid to County for that same month; if the resulting amount is a positive number, Lessee shall pay that amount to County; if that amount is a negative number, no Percentage Rent shall be paid to County for that month but nevertheless the Monthly Minimum Rent shall be paid every month of the Term hereof. Percentage Rent payments shall be reconciled annually at the end of each Lease Year, with any Excess Percentage Rent Payments credited as provided in subsection 4.2.2.4. Payment may be made by check or draft issued and payable to The County of Los Angeles, and mailed or otherwise delivered to the Department of Beaches and Harbors, Los Angeles County, 13483 Fiji Way, Trailer No. 2, Marina del Rey, California 90292, or such other address as may be provided to Lessee by County. Lessee acknowledges that County shall have no obligation to issue monthly rental statements, invoices or other demands for payment, and that the rental payments required herein shall be payable notwithstanding the fact that Lessee has received no such statement, invoice or demand. In the event any payment is not received by County within five (5) days after the date due, Lessee acknowledges that County will experience additional management, administrative and other costs that are impracticable or extremely difficult to determine. Therefore, a fee ("Late Fee") of six percent (6%) of the unpaid amount shall be added to any amount unpaid within five (5) days after when due and payable. In addition to any Late Fee, any unpaid rent due shall additionally bear interest at an annual rate equal to the Prime Rate plus three percent (3%), computed from the date when such amounts were due and payable, compounded monthly, until paid. Lessee acknowledges that such Late Fee and interest shall be applicable to all identified monetary deficiencies under this Lease, whether identified by audit or otherwise, and that interest on such amounts shall accrue from and after the date when such amounts were due and payable as provided herein (as opposed to the date when such deficiencies are identified by County).

4.6 Changes of Ownership and Financing Events. Except as otherwise provided in this Section 4.6, each time Lessee proposes either (a) a Change of Ownership or (b) a Financing Event, County shall be paid (1) an Administrative Charge equal to the Actual Cost incurred by County in connection with its review and processing of said Change of Ownership or Financing Event ("Administrative Charge") and (2) a Net Proceeds Share, in the event County approves such proposed Change of Ownership or Financing Event and such transaction is consummated. "Net Proceeds Share" shall mean the applicable amount determined pursuant to Section 4.8 of this Lease. Changes of Ownership and Financing Events are further subject to County approval as provided in Articles 12 and 13 of this Lease.

4.6.1 Change of Ownership. "Change of Ownership" shall mean (a) any transfer by Lessee of a five percent (5%) or greater direct ownership interest in this Lease or in any Major Sublease, (b) Lessee's granting of a Major Sublease or (c) any transaction or series of related transactions not described in clauses (a) or (b) of this subsection 4.6.1 which constitute an Aggregate Transfer of fifty percent (50%) or more of the beneficial interests in, or a Change of Control of, Lessee, this Lease or a Major Sublease. For the purposes of this Lease, "Change of Control" shall refer to a transaction whereby the transferee acquires a beneficial interest in Lessee, this Lease or a Major Sublease which brings its cumulative beneficial interest in Lessee, this Lease or a Major Sublease, as appropriate, to over fifty percent (50%).

4.6.2 Excluded Transfers. Notwithstanding anything to the contrary contained in this Lease, Changes of Ownership resulting from the following transfers ("Excluded Transfers") shall not be deemed to create an obligation to pay County a Net Proceeds Share:

4.6.2.1 a transfer by any direct or indirect partner or member (as the case may be) of Lessee as of the Effective Date, to any other direct or indirect partner or member of Lessee as of the Effective Date, including in each case to or from a trust for the benefit of the immediate family (as defined in subsection 4.6.2.3 below) of such direct or indirect partner or member of Lessee;

4.6.2.2 a transfer to a spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation, as long as such transfer does not result in a Change of Control of Lessee or a change in the managing general partner of Lessee;

4.6.2.3 a transfer of ownership interests in Lessee or in constituent entities of Lessee (i) to a member of the immediate family of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, parents, siblings and grandchildren), (ii) to a trust for the benefit of a member of the immediate family of the transferor, or (iii) from such a trust to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer described in this subsection 4.6.2.3 is the result of gift, devise, intestate succession or operation of law;

4.6.2.4 a transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation whose stock is traded publicly on a national stock exchange or is traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services; provided, however, that this exclusion shall not apply to a single transaction or series of related transactions whereby fifty percent (50%) or more of the beneficial interests in such entity are transferred, or which otherwise effects a Change of Control in such entity;

4.6.2.5 a mere change in the form, method or status of ownership (other than a transfer of beneficial interests between or among individuals and/or entities



controlled by such individuals); provided that this exclusion shall not apply to a single transaction or series of related transactions whereby an Aggregate Transfer of fifty percent (50%) or more of the beneficial interests in Lessee, this Lease or a Major Sublease has occurred;

4.6.2.6 any transfer resulting from a Condemnation by County; or

4.6.2.7 the transfer of a membership or partnership interest in Lessee to a bankruptcy remote entity (including changing the manager of Lessee's limited liability company to a bankruptcy remote entity) for financing purposes, provided that there is no change in the beneficial ownership of Lessee and its constituent partners or members.

4.6.3 Aggregate Transfer. "Aggregate Transfer" shall refer to the total percentage of the shares of stock, partnership interests, membership interests or any other equity interests (which constitute beneficial interests in Lessee, this Lease or a Major Sublease, as appropriate) transferred in all transactions (other than those enumerated in subsection 4.6.2) occurring since the later of (a) the Effective Date, (b) the execution by Lessee of this Lease or a Major Sublease, as appropriate, or (c) the most recent Change of Ownership upon which an Administrative Charge was paid to County.

4.6.4 Beneficial Interest. As used in this Lease, the "beneficial interest," "beneficial interest in this Lease," or "beneficial interest in a Major Sublease" shall refer to the interests of the natural persons who comprise the ultimate owner or owners of Lessee's interest in this Lease or a Major Sublease, or a Major Sublessee's interest in a Major Sublease, whichever is appropriate, regardless of the form of such ownership and regardless of whether such interests are owned through corporations, trusts, partnerships, limited liability companies or layers thereof; provided, however, that if an entity with an ownership interest in the Lease or a Major Sublease is a partnership, corporation or limited liability entity (a) whose beneficial interest in this Lease or a Major Sublease, whichever is appropriate, comprises less than fifteen percent (15%) of its total assets or (b) in which no ten (10) shareholders, partners or members together own more than thirty percent (30%) of the partnership interests, shares, membership interests or other equity interests in the entity, then for the purposes of Sections 4.6 through 4.8 hereof, the entity itself shall be deemed to be the ultimate owner of the beneficial interest in this Lease or a Major Sublease, as appropriate, and the owners of such entity shall not be treated as the ultimate owners of such beneficial interest.

4.6.4.1 Interests Held By Entities. Except as otherwise provided herein, an interest in Lessee, this Lease or a Major Sublease held or owned by a partnership, limited liability company, corporation or other entity shall be treated as owned by the partners, members, shareholders or other equity holders of such entity in proportion to their respective equity interests, determined by reference to the relative values of the interests of all partners, members, shareholders or other equity holders in such entity. Where more than one layer of entities exists between Lessee or a Major Sublessee, as appropriate, and the ultimate owners, then the foregoing sentence shall be applied successively to each such entity in order to determine the

ownership of the beneficial interests in Lessee, this Lease or a Major Sublease, as appropriate, and any transfers thereof.

4.6.4.2 Ownership of Multiple Assets. The proceeds of any event constituting or giving rise to a Change of Ownership shall be apportioned to this Lease or a Major Sublease, whichever is appropriate, and to any other assets transferred in the same transaction in proportion to the relative fair market values of the respective assets transferred. The Net Proceeds Share shall be calculated only by reference to the amount of such proceeds apportioned to this Lease, a Major Sublease or the beneficial interests therein, whichever is appropriate.

4.7 Calculation and Payment. A deposit of Fifteen Thousand and 00/100 Dollars (\$15,000) toward the Administrative Charge shall be due and payable upon Lessee's notification to County of the proposed Change of Ownership or Financing Event and request for County's approval thereof. If the transaction is approved, the balance of the Administrative Charge, if any, and the Net Proceeds Share shall be due and payable concurrently with the consummation of the transaction constituting the Change of Ownership or Financing Event giving rise to the obligation to pay such fee, regardless of whether or not money is transferred by the parties in connection with such consummation. If County disapproves the proposed transaction then, within thirty (30) days after notice of its disapproval, County shall deliver to Lessee a written notice setting forth the Administrative Charge, together with a refund of the amount, if any, of the deposit in excess of the Administrative Charge otherwise allowable under Section 4.6. In the event that the Administrative Charge exceeds the deposit, then Lessee shall pay County the balance of the Administrative Charge otherwise allowable under Section 4.6. within thirty (30) days after receipt of the notice from County setting forth the Administrative Charge and any supporting documentation reasonably requested by Lessee within five (5) business days after its receipt of such notice. Together with its request for County approval of the proposed transaction, Lessee, a Major Sublessee or the holder of a beneficial interest in this Lease or a Major Sublease, whichever is appropriate, shall present to County its calculation of the Net Proceeds Share (if any) anticipated to be derived therefrom, which shall include the adjustment to Improvement Costs (as described in subsection 4.8.4), if any, which may result from the payment of such Net Proceeds Share ("Calculation Notice"). Each Calculation Notice shall contain such detail as may be reasonably requested by County to verify the calculation of the Net Proceeds Share. Within thirty (30) days after the receipt of the Calculation Notice and all information or data reasonably necessary for County to verify the calculations within the Calculation Notice, County shall notify the party giving the Calculation Notice as to County's agreement or disagreement with the amount of the Net Proceeds Share set forth therein or the related adjustment of Improvement Costs, if any. Failure of County to approve the Calculation Notice in writing within such thirty (30) day period shall be deemed to constitute County's disapproval thereof. Failing mutual agreement within thirty (30) days after the expiration of said thirty (30) day period, the dispute shall be resolved by arbitration as set forth in Article 16 of this Lease in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value. In the event County approves a Change of Ownership or Financing Event but a dispute exists as to the Net Proceeds Share in respect thereof or the related adjustment, if any, in Improvement Costs (as described in subsection 4.8.4), then the transaction may be consummated after County has disapproved Lessee's Calculation Notice; provided, however, that (i) Lessee shall remit to County as otherwise required hereunder the undisputed portion of the Net Proceeds

Share and (ii) Lessee shall deposit the disputed portion of the Net Proceeds Share into an interest bearing escrow account at the closing of the transaction, which portion shall be distributed in accordance with the arbitration of the dispute pursuant to Article 16 of this Lease, in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value.

4.7.1 Transfer of Less Than Entire Interest. Where a Change of Ownership has occurred by reason of the transfer of less than all of an owner's beneficial interest in Lessee, this Lease or a Major Sublease, the Net Proceeds Share shall be due and payable with respect to those portions of such beneficial interest that have been acquired by the transferee since the latest of (a) the Effective Date, (b) the date of the execution of this Lease (or a Major Sublease) by Lessee, (c) the most recent event creating Lessee's obligation to pay a Net Proceeds Share (including without limitation an approval by County of a transfer at a price which falls below the threshold for paying a Net Proceeds Share) with respect to this Lease (or a Major Sublease), or (d) the date which is twelve (12) months prior to the transfer which constitutes the Change of Ownership.

4.7.2 Purchase Money Notes/Stock Consideration. If the transferor of an interest accepts a note made by the transferee of such interest in payment of all or a portion of the acquisition cost (a "Purchase Money Note"), the Net Proceeds Share shall be payable by Lessee in cash at the time of the consummation of the transaction notwithstanding the deferred nature of the consideration. In such case, the face amount of the Purchase Money Note shall be treated as sale proceeds; provided that if the interest rate on such Purchase Money Note is in excess of a market rate, then the value of such note shall be increased to reflect such above-market rate. If the transferor of an interest accepts stock or other non-cash consideration in payment of all or a portion of the acquisition cost, the fair market value of the stock or other non-cash consideration shall be treated as having been received in the form of cash.

4.7.3 Obligation to Pay Net Proceeds Share and Administrative Charge. With respect to a Change of Ownership giving rise to the Administrative Charge and Net Proceeds Share, the obligation to pay the Administrative Charge and Net Proceeds Share shall be the joint and several obligation of the transferor and transferee. In the event that the Administrative Charge or Net Proceeds Share is not paid when due with respect to the beneficial interest in this Lease, then County shall have the remedies set forth in Section 13.3 hereof.

4.8 Net Proceeds Share. In the event of a Change of Ownership, the Net Proceeds Share shall be a sum equal to the greater of (a) five percent (5%) of the gross sale or transfer proceeds or other consideration given for the interests transferred (but in the case of a transfer to a party affiliated with or otherwise related to the transferor, such consideration shall in no event be deemed to be less than the fair value of the interests transferred), or (b) twenty percent (20%) of the Net Transfer Proceeds from such transfer; provided, however, that with respect to a Change of Ownership prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date, if the Gross Proceeds are less than 105.26% of the Applicable Costs, then the Net Proceeds Share shall be calculated only in accordance with clause (b) above (i.e., the Net Proceeds Share shall be twenty percent (20%) of the Net Transfer Proceeds from such transfer). With respect to a Financing Event, the Net Proceeds Share (if any) shall be equal to twenty percent (20%) of the Net

Refinancing Proceeds from such Financing Event. Notwithstanding any contrary provision of this Section 4.8, in the calculation of Net Transfer Proceeds and Net Refinancing Proceeds derived from a Change of Ownership or Financing Event, as applicable, pursuant to the remaining provisions of Section 4.8 below, there shall be no duplication of any amounts to be subtracted from the total consideration received in connection with such transaction, even if a particular amount qualifies for subtraction under more than one category.

4.8.1 Transaction by Original Lessee. In the case of a transfer by the original Lessee executing this Amended and Restated Lease Agreement (i.e., Marina Waterside, LLC, but not a successor or assignee of Lessee) constituting a Change of Ownership, "Net Transfer Proceeds" shall mean the total cash and other consideration received (but in the case of a transfer to a party affiliated with or otherwise related to the transferor that is not an Excluded Transfer, such consideration shall in no event be deemed to be less than the fair value of the interests transferred) ("Gross Proceeds"), less the sum of the following costs with respect to Lessee (but not its successors or assignees) ("Applicable Costs"):

4.8.1.1 **[Insert definitive dollar amount of appraisal of value of leasehold as extended]**, but not less than \$ \_\_\_\_\_ (the "Base Value"), together with the final actual hard and soft construction costs paid by Lessee in connection with the construction of the Redevelopment Work or other physical Improvements to the Premises in accordance with Article 5 herein (including any accrued developer fee not to exceed a fair market developer fee), whose costs have been submitted to Director within one hundred twenty (120) days after the completion of such Improvements and which costs shall have been approved in writing by Director, which approval shall not be unreasonably withheld ("Improvement Costs"). If by the date that is sixty (60) days after the completion of the Redevelopment Work (or other Improvements) the final amount of the Improvement Costs is not established because of a dispute or disputes between Lessee and its contractor(s), then Lessee shall note such dispute(s) in its submission of the Improvement Costs (including a description of the costs and the amounts under dispute). Lessee shall thereafter notify County in writing within thirty (30) days after the resolution of any such dispute as to any final adjustment required to the amount of the Improvement Costs to reflect the resolution of such dispute.

4.8.1.2 Commissions, title and escrow costs, documentary transfer taxes, lender fees and costs (including, without limitation, rate lock fees and prepayment fees) and other bona fide closing costs actually paid to third parties (including lenders) and documented to the reasonable satisfaction of Director, which costs were directly attributable to the consummation of the particular transaction giving rise to the obligation to pay County a Net Proceeds Share (collectively, "Documented Transaction Costs").

4.8.1.3 That portion of the principal amount of any Financing Event after the Effective Date that constituted Net Refinancing Proceeds on which Lessee paid County a Net Proceeds Share.

4.8.2 Transfer by Lessee's Successor. In the case of a transfer by a Lessee other than the original Lessee, "Net Transfer Proceeds" shall mean the Gross Proceeds received by that successor Lessee (but in the case of a transfer to a party affiliated with or otherwise related to the transferor that is not an Excluded Transfer, such consideration shall in no event be deemed to be less than the fair value of the interests transferred), minus the Applicable Costs. For purposes of this subsection 4.8.2, Applicable Costs shall mean the sum of the following with respect to such successor Lessee:

4.8.2.1 The greatest of (a) the sum of the Base Value plus any Improvement Costs incurred prior to such successor lessee's acquisition of the leasehold, (b) the purchase price such successor paid to Lessee or such successor's seller for the interest acquired, or (c) the principal amount of any subsequent refinancing by Lessee in connection with which County was paid a Net Proceeds Share; plus

4.8.2.2 Improvement Costs actually paid by such successor Lessee after such successor Lessee's acquisition of its leasehold interest in the Premises, and not subsequently repaid with Net Refinancing Proceeds, provided that such costs have been submitted to and approved by County to the extent provided in subsection 4.8.1.1 with respect to Lessee; and,

4.8.2.3 Documented Transaction Costs with respect to the transfer of the interest by the successor.

4.8.3 Transfers of Major Sublessee's Interest. With respect to any Change of Ownership described in subsection 4.6.1(b), subsections 4.8.1 and 4.8.2 shall apply, except that any rents or other amounts received by Lessee from the Major Sublessee and with respect to which a percentage is passed through to County under any provision of this Lease (other than payment of Net Proceeds Share) shall be disregarded in the computation of Net Transfer Proceeds.

4.8.4 Other Transfers. With respect to any Change of Ownership not described in subsections 4.8.1 through 4.8.3 (i.e., a transfer of an interest in an entity holding a direct or indirect ownership interest in this Lease or in a Major Sublease), subsections 4.8.1 and 4.8.2 shall apply to such Change of Ownership, except that in lieu of deducting the amounts described in either subsection 4.8.1.1 or subsections 4.8.2.1 and 4.8.2.2, as applicable, in determining Net Transfer Proceeds, the cost to the transferor of the interest being transferred (which shall in no event be deemed to be less than the fair market value of the interest based on the amounts described in subsection 4.8.1.1 or subsections 4.8.2.1 and 4.8.2.2, as applicable) shall be deducted. Furthermore, in the event that any such Change of Ownership produces a Net Proceeds Share, the then existing Improvement Costs shall be increased by an appropriate amount to reflect the gross amount on which such Net Proceeds Share was calculated, as if it had been realized by Lessee upon a transfer of a comparable interest in this Lease or in a Major Sublease, as appropriate.

4.8.5 Net Refinancing Proceeds. "Net Refinancing Proceeds" shall mean the gross principal amount of any Financing Event after the Effective Date, minus (i) the greatest of (a) the Base Value, (b) the principal amount of Lessee's existing financing as of the Effective Date or (c) the principal amount of any subsequent refinancing by Lessee in connection with which County was paid a Net Proceeds Share, together with any portion of the proceeds of the Financing Event which shall be used for Improvement Costs, (ii) other Improvement Costs incurred by Lessee and not paid for or repaid with the proceeds of any Financing Event, and (iii) Documented Transaction Costs with respect to such Financing Event.

4.8.6 Transfers to which Sections 4.6 through 4.8 Apply. The provisions of Sections 4.6 through 4.8 hereof shall apply to all transfers of beneficial interests in this Lease or a Major Sublease which constitute a Change of Ownership, unless such transfers are otherwise excluded pursuant to this Lease. Furthermore, the provisions of Sections 4.6 through 4.8 of this Lease, and the principles set forth therein, shall apply to any transfer or series of transfers which County can demonstrate was primarily structured for the purpose of avoiding the obligation to pay Net Proceeds Share set forth in Sections 4.6 through 4.8 of this Lease and which, viewed together, would otherwise constitute a Change of Ownership.

4.8.7 Payment. Net Proceeds Share shall be due and payable concurrently with the transfer giving rise to the obligation to pay such fees and shall be the joint and several obligation of the transferee and transferor. Net Proceeds Share not paid when due shall be subject to a late fee of six percent (6%) of the amount due, together with interest on such Net Proceeds Share and late fee at the Applicable Rate from the date due until paid. In the event that the proceeds of the transaction giving rise to the obligation to pay Net Proceeds Share are comprised, in whole or in part, of assets other than cash, then the cash payment of the Net Proceeds Share shall reflect the fair market value of such non-cash assets as of the date of the Change of Ownership, which shall be set forth in the Calculation Notice. Notwithstanding the foregoing, in the case of a Change of Ownership described in subsection 4.6.1(b), the Net Proceeds Share shall be payable to County as and when the Net Transfer Proceeds are received, with the Net Proceeds Share being equitably apportioned to the payments derived by Lessee from said Change of Ownership (other than any payments passed through to County under this Lease).

4.8.8 Shareholder, Partner, Member, Trustee and Beneficiary List. Prior to the Effective Date, prior to each subsequent Change of Ownership or Financing Event and upon the request of County (which requests shall be no more frequent than once per year), Lessee shall provide County with an updated schedule listing the names and mailing addresses of (i) all shareholders, partners, members and other holders of equity or beneficial interests in Lessee, this Lease or the Major Sublessee under any Major Sublease, and (ii) all shareholders, partners, members and other holders of equity or beneficial interests in any of the constituent shareholders, partners, members or other holders of equity or beneficial interests in Lessee or any Major Sublessee under any Major Sublease, if such interest exceeds a five percent (5%) or greater beneficial interest in Lessee, its constituent shareholders, partners, members or other interest holders, or the Major Sublessee under a Major Sublease. In the event that such shareholder, partner,

member or other interest holder is a trust, Lessee shall include in such schedule the name and mailing address of each trustee of said trust, together with the names and mailing addresses of each beneficiary of said trust with greater than a five percent (5%) actuarial interest in distributions from, or the corpus of, said trust; provided, however, that to the extent that Lessee is prevented by Applicable Laws from obtaining such information regarding the beneficiaries of said trust(s), Lessee shall have complied with this provision if Lessee uses its best efforts to obtain such information voluntarily and provides County with the opportunity to review any such information so obtained. Lessee agrees to use its best efforts to provide County with any additional information reasonably requested by County in order to determine the identities of the holders of five percent (5%) or greater beneficial interests in Lessee or its constituent shareholders, partners, members or other interest holders, this Lease or a Major Sublease.

5. REDEVELOPMENT WORK; ALTERATIONS.

5.1 Redevelopment Work. Promptly following the Effective Date Lessee shall commence the performance of the renovation and construction work described in Exhibit B attached to this Lease (the "Renovation Plan"). The renovation and construction work described in the immediately preceding sentence is referred to herein as the "Redevelopment Work." Without limitation of the Redevelopment Work described on Exhibit B, the Redevelopment Work shall include the remodeling of the existing Ralphs market to operate as a Ralphs FreshFare or other then highest quality equivalent store concept of Ralphs or its successor (if applicable). Subject to the satisfaction of the Ralphs Conditions Precedent (as defined below), the Redevelopment Work shall also include an approximate 9,500 square foot expansion of the existing Ralphs market (the "Ralphs Expansion"), which expansion shall constitute an approximately 5,300 square foot net expansion of the overall Improvements located on the Premises. The Redevelopment Work shall be of a quality at least comparable to other first class shopping centers in West Los Angeles, the Courtyard at Calabasas, and the Encino/Hayvenhurst project (located at the Northeast corner of Ventura Boulevard and Hayvenhurst Avenue).

For purposes hereof, the "Ralphs Conditions Precedent" shall mean the Conditions Precedent set forth in Section 2 of Exhibit D of that certain Fifth Amendment to Lease dated August 14, 2003, between Lessee's predecessor-in-interest, Carlisle Realty Holdings I, and Alpha Beta Company (the "Ralphs Lease Amendment"). Lessee shall comply with all of its obligations under the Ralphs Lease Amendment pertaining to the Ralphs Conditions Precedent, and shall otherwise use its best efforts to cause the satisfaction of the Ralphs Conditions Precedent not later than the date required for the satisfaction of such conditions precedent under the Ralphs Lease Amendment.

There shall be no changes, modifications or exceptions to the Renovation Plan, except as expressly approved in advance in writing by the Director. The design, layout, construction materials, landscaping, hardscaping and other improvement specifications pertaining to the Redevelopment Work shall be subject to County's approval as set forth in this Section 5, and shall be subject to the receipt by Lessee of all required governmental (including, without limitation, County, Coastal Commission and Design Control Board) planning and entitlement approvals. Lessee shall be solely responsible for all costs and expenses incurred in connection with the design, entitlement and construction of the Redevelopment Work. Lessee shall expend

not less than \$8,865,000, including without limitation a development fee not to exceed six percent (6%) of construction costs, and including any contribution by or from Alpha Beta Company (the "Redevelopment Work Investment"), for the cost of the Redevelopment Work, which expenditures shall be subject to the verification and reasonable approval by County. If the Redevelopment Work includes the Ralphs Expansion, then the Redevelopment Work Investment shall be increased to \$10,865,000, including funds contributed by Alpha Beta Company to the Ralphs Expansion.

Lessee shall comply with all of the time deadlines and schedules described in this Section 5 relating applicable to Lessee in connection with the completion of the design of the Redevelopment Work. Lessee's failure to do so, if not cured within the applicable cure period set forth in subsection 13.1.2, shall constitute an Event of Default. All of the Redevelopment Work shall be substantially completed in accordance with the Final Plans and Specifications for the Redevelopment Work on or before that date (the "Required Completion Date") which is two (2) years following the Effective Date. For purposes hereof, "substantial completion" shall mean that the Redevelopment Work is completed, subject to minor punch-list items that do not interfere with the full use and occupancy of the Improvements, as modified. All such punch-list items shall be completed within thirty (30) days after the substantial completion of the Redevelopment Work. Notwithstanding any contrary provision of this Section 5.1, if Lessee is delayed in the substantial completion of the Redevelopment Work due to Force Majeure or due to a County Delay (as defined below), then the Required Completion Date shall be extended by the period of such Force Majeure delay or County Delay; provided, however, that any such extension shall be limited to the period of such Force Majeure delay or County Delay, and no such delay shall be considered to have commenced until such time as Lessee shall have notified Director in writing of such delay; and provided, further, that the aggregate amount of extensions to the Required Completion Date due to Force Majeure delays shall not exceed two (2) years. For purposes hereof, a "County Delay" shall mean County's failure to comply with the time periods imposed upon County under this Article 5, except in the case where a failure of County to notify Lessee of its approval or disapproval of a matter constitutes County's deemed approval of such matter, or constitutes County's deemed disapproval of such matter and County's disapproval of such matter is authorized under the circumstances. Following any deemed disapproval by Director of a submission by Lessee under this Article 5, Director shall, within thirty (30) days after receipt of a written request from Lessee, disclose to Lessee in writing Director's objections to the submission.

Lessee acknowledges that the principal inducement to County to enter into this Amended and Restated Lease Agreement and to extend the Term as provided herein is the timely completion of the Redevelopment Work. In the event that Lessee fails to substantially complete the Redevelopment Work on or before the Required Completion Date (as such date may be extended as provided above), then in addition to any other right or remedy which County may have in connection therewith, this Lease shall be automatically amended such that the terms and provisions of this Lease revert back to the terms and provisions of the Existing Lease (including, without limitation, the Existing Expiration Date), as modified by the "Non-Exercise Amendment" described in the Option Agreement (the "Reversion Amendment").

5.2 Application of Article 5 to Redevelopment Work. The remaining sections of this Article 5 pertain to the construction of the Redevelopment Work and to any other Alterations (as



defined below) which Lessee may be required or desire to make to the Premises during the Term, including without limitation, the Subsequent Renovations described in Section 5.9 below. For purposes of this Lease, Alterations shall mean the construction of any alterations or modifications to the Improvements located on the Premises or the construction of any new Improvements. Both the Redevelopment Work and the Subsequent Renovations shall be considered to be Alterations. Accordingly, except as expressly provided in this Article 5, all of the terms and provisions of Article 5 of this Lease shall be applicable to the Redevelopment Work and the Subsequent Renovations.

5.3 Plans and Specifications for Alterations. Lessee shall make no Alterations without the prior written approval of the Director (except as expressly provided in Section 5.7 below). Prior and as a condition precedent to the construction of any Alterations, Lessee shall submit to Director, for Director's approval, the plans, specifications and other materials described in this Section 5.3 pertaining to such Alterations (except to the extent such submittals and approvals have been previously completed with respect to Redevelopment Work pursuant to the Option Agreement). All Alterations must be consistent with the Permitted Uses set forth in Article 3 of this Lease.

5.3.1 Schematics and Narrative. Lessee shall submit to the Director six (6) sets of schematic plans together with a narrative description and construction cost estimate summary clearly delineating the nature, size, configuration and layout of the Alterations. Such plans shall, among other things, clearly delineate the architectural theme or motif of the Alterations and shall identify and illustrate the boundaries of the Premises and all rights-of-way or other areas reserved to County or third parties which are located thereon. Director shall have sixty (60) days within which to approve or disapprove such submission. Failure of Director to approve such submission in writing within said sixty (60) day period shall be deemed disapproval of said submission. After approval of schematic plans (or subsequent approval of preliminary or final plans) by Director, if changes in such plans are required by conditions of approval of the Alterations imposed by the California Coastal Commission or other governmental agency having jurisdiction thereover, Lessee shall promptly advise Director in writing of such changes and Director shall not disapprove the changes required by the California Coastal Commission or other governmental agency, as appropriate, unless such changes materially prejudice County's ability to enjoy the rights and benefits granted to County pursuant to this Lease.

5.3.2 Preliminary Plans and Specifications. As soon as practicable, but in no event later than sixty (60) days after Director's approval of the materials submitted pursuant to subsection 5.3.1, Lessee shall submit to Director six (6) sets of preliminary plans, outline specifications and construction cost estimates for the Alterations. The preliminary plans, outline specifications and construction cost estimate shall conform to, expand upon and reflect a natural evolution from the descriptions and estimates set forth in the approved schematic plans and narrative. Any material difference in the scope, size, configuration, arrangement or motif of the Improvements from those described in the approved schematics and narrative shall be separately identified and described. Director shall have twenty-one (21) days within which to approve or reasonably disapprove such submission, and Director may disapprove said preliminary plans on the grounds that they

do not reflect a natural evolution from the approved schematic plans or that they materially differ from the approved schematic plans and narrative. Failure of Director to disapprove said preliminary plans within twenty one (21) days after Director's receipt thereof shall be deemed Director's approval thereof; provided, however, that in the event that the preliminary plans, outline specifications and construction cost estimates contain substantial changes from the approved schematics and narrative, then Director shall have sixty (60) days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the submission of the preliminary plans, outline specifications and construction cost estimates, Lessee must deliver to Director a transmittal letter containing the following text prominently displayed in bold faced type:

**"PURSUANT TO SUBSECTION 5.3.2 OF THE AMENDED AND  
RESTATED LEASE AGREEMENT, IF THESE MATERIALS  
CONTAIN NO SUBSTANTIAL CHANGES FROM THE MATERIALS  
PREVIOUSLY SUBMITTED TO YOU, YOU HAVE TWENTY ONE  
(21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO  
APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE  
THESE MATERIALS IN WRITING WITHIN TWENTY ONE (21)  
DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL  
CONSTITUTE YOUR APPROVAL OF THEM."**

5.3.3 Final Plans and Specifications. As soon as practicable, but in no event later than ninety (90) days after approval of the preliminary plans, outline specifications and construction cost estimate (or when and to the extent appropriate, no later than ninety (90) days after final approval is obtained from the California Coastal Commission as to items either that were materially adversely restricted or changed if California Coastal Commission approval were not obtained for a related item), Lessee shall submit for approval by Director six (6) complete sets of final plans, detailed specifications and a construction cost statement for the Alterations, together with one (1) set of appropriate structural computations, identical to those requested or required by the County Director of Public Works incident to the issuance of building permits under the relevant provisions of the Los Angeles County Building Code. Lessee shall file duplicate copies of the final plans, detailed specifications and construction cost statement required by this Section with the County Director of Public Works, together with the necessary and appropriate applications for building permits. Any material difference in the scope, size, configuration, arrangement or motif of the Alterations from those described in the approved preliminary plans and specifications shall be separately identified and described. Director shall have twenty one (21) days within which to approve or disapprove such submission, and Director may disapprove such submission on the grounds that they do not reflect a natural evolution from or that they materially differ from the approved preliminary plans, outline specifications and construction cost estimates. Failure of Director to disapprove said materials within twenty one (21) days after Director's receipt shall be deemed Director's approval thereof; provided, however, that in the event that the final plans, detailed construction specifications and construction cost statement contain substantial changes from the preliminary plans, outline specifications and construction cost estimates, then Director shall have sixty (60) days in

which to approve said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the submission of the final plans, detailed construction specifications and construction cost statement, Lessee must deliver to Director a transmittal letter containing the following text prominently displayed in bold faced type:

**"PURSUANT TO SUBSECTION 5.3.3 OF THE AMENDED AND RESTATED LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU, YOU HAVE TWENTY ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM."**

Director's approval shall not be unreasonably withheld; provided, however, that it shall be deemed reasonable to disapprove any submission not in substantial conformity with the approved preliminary plans and specifications. No material modification shall be made to the Alterations described in the approved final plans, specifications and costs (the "Final Plans and Specifications") without the prior written approval of Director, which shall not be unreasonably withheld.

5.4 Conditions Precedent to the Commencement of Construction. No Alterations shall be commenced until each and all of the following conditions have been satisfied:

5.4.1 Permits and Other Approvals. Lessee shall have received and furnished the Department with copies of all permits, licenses and other governmental approvals necessary for commencement of the Alterations.

5.4.2 Copies of Construction Contracts. Lessee shall have furnished County with copies of any contract(s) entered into between Lessee and any general contractor(s) employed for the purpose of constructing the Alterations.

5.4.3 Performance and Payment Bonds. Lessee shall, at its own cost and expense, have furnished County with the following separate corporate surety bonds not less than ten business (10) days prior to the commencement of construction, which bonds must be in form and content reasonably satisfactory to County:

5.4.3.1 A corporate surety performance bond ("Performance Bond") issued by a surety company licensed to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the amount of all hard construction costs approved by County in conjunction with the approved work. The Performance Bond and its issuer shall be in all material respects reasonably satisfactory to County. It shall name Lessee as principal and said issuer as surety, and County as obligee, assuring full and satisfactory performance by Lessee of

Lessee's obligations herein to build, construct and otherwise complete the Improvements described in the approved final plans and specifications.

5.4.3.2 A corporate surety payment bond, issued by a surety company licensed to transact business as such in the State of California, with Lessee as principal, said company as surety and County as obligee, in a sum equal to one hundred percent (100%) of the total construction cost anticipated to be incurred in connection with the approved work, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of said construction work or for labor done thereon of any kind whatsoever and protecting County from any and all liability, loss or damages arising out of or in connection with any failure to make such payment (the "Payment Bond"). The Payment Bond shall be in form and content reasonably satisfactory to County.

In the event that construction is performed by a licensed general contractor on behalf of Lessee, provided that such contractor provides County with a bond or bonds compliant with this subsection, and in all material respects reasonably satisfactory to County and otherwise complying with this subsection, County will accept such contractor's bonds in lieu of the Performance Bond and/or Payment Bond by Lessee required by this subsection 5.4.3.

5.4.4 Alternative Security. In lieu of providing the Payment and Performance Bonds, Lessee may provide any of the following alternative security: (i) a certificate of deposit, cash or United States governmental security, (ii) a letter of credit, or (iii) a Set Aside Letter from Lessee's construction lender. The foregoing security shall be in an amount equal to one hundred percent (100%) of the construction contract price, and shall permit County to draw thereon to complete the construction of the Improvements if the same have not been completed by Lessee or if an Event of Default has occurred under this Lease. A condition precedent to Lessee's right to provide the alternate security described in this subsection 5.4.4 shall be delivery by Lessee to County of an opinion of counsel from a law firm and in a form acceptable to County to the effect that the construction work does not constitute a public work of improvement requiring the delivery of the bonds described in subsection 5.4.3 above. Director shall have the authority, in his discretion, to modify, waive or reduce the amount of any bonds or alternate security required hereunder.

5.4.5 Evidence of Financing. Lessee shall have provided evidence satisfactory to County of its (and Alpha Beta Company, if applicable) having sufficient financial resources, as determined by Director, to complete the Alterations. Lessee shall furnish Director with copies of all final notes, guarantees, partnership, shareholder or limited liability company agreements, construction loan and/or permanent loan commitments, documents evidencing equity contributions, documents creating and/or perfecting security interests, and all documents and exhibits referred to in any of the foregoing, together with any and all recorded documents affecting an interest in the Premises, within seven (7) days after such document or instrument becomes effective.

5.5 Manner of Construction.

5.5.1 General Construction Standards. All construction, alteration, modification or repairs permitted herein shall be accomplished by Lessee with due diligence. Lessee shall take all reasonable steps to minimize any damage, disruption or inconvenience caused by such work and make adequate provisions for the safety and convenience of all persons affected thereby. Lessee shall repair, at its own cost and expense, any and all damage caused by such work, and shall restore the area upon which such work is performed to a condition which is at least equal to or better than the condition which existed before such work was commenced. Additionally, Lessee shall pay or cause to be paid all costs and expenses associated therewith and shall indemnify, defend and hold County harmless from and against all damages, costs, expenses, losses or claims arising out of or in connection with the performance of such work, except to the extent that such damages, costs, expenses, losses or claims are caused by County, its employees or agents acting within the scope of their employment or agency relationship. Dust, noise and other effects of such work shall be controlled using accepted measures customarily utilized in order to control deleterious effects associated with construction projects in well populated and developed areas of Southern California.

5.5.2 Utility Work. Any work performed by or on behalf of Lessee or any occupant of the Premises to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit, or any other utility service shall be performed in a manner that minimizes interference with the provision of such services to the Premises and other persons.

5.5.3 Construction Safeguards. Lessee shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or on behalf of Lessee, all necessary safeguards for the protection of workers and the public.

5.5.4 Compliance with Construction Documents and Laws; Issuance of Permits. All Improvements on the Premises shall be completed in substantial compliance with any construction documents approved by County and also in compliance with all Applicable Laws. Lessee shall have the sole responsibility for obtaining all necessary permits and shall make application for such permits directly to the person or governmental agency having jurisdiction thereover.

5.5.5 Notice to Director; Damage to County Improvements. Lessee further agrees to keep Director apprised of the progress of the work to the end that Director may timely inspect the Premises to assure proper safeguarding of any County-owned improvements existing on or around the Premises, including but not limited to seawalls, underground conduits and utility lines. If any such County-owned improvement is damaged in connection with said construction activity, Lessee agrees to repair such damage immediately at no cost or expense to County or, in the event that Lessee fails to effectuate such repair within five (5) business days after written notice from County (or such longer period as may be reasonably required to complete such repair so long as Lessee commences such repair within five (5) business days and thereafter diligently prosecutes same to completion), County may enter upon the Premises to make such repairs, the Actual Cost of which shall be paid by Lessee within five (5) business days after demand by County.

5.5.6 Rights of Access. Representatives of the Department of Beaches and Harbors of the County shall, upon reasonable notice and at reasonable times, have the right of reasonable access to the Premises and the Improvements thereon without charges or fees, for the purpose of ascertaining compliance with the terms and conditions of this Lease, including but not limited to the inspection of the construction work being performed. Such access shall be reasonably calculated to minimize interference with Lessee's construction and/or operations. Lessee shall have the right to have a representative present to accompany the representatives of the Department of Beaches and Harbors of the County in connection with such access. In the event of any emergency which is life-threatening or which involves the threat of potential substantial damage, County shall have the right to enter the Premises immediately and without notice to or accompaniment by Lessee.

5.5.7 Notice of Completion. Upon completion of the Redevelopment Work or any other Alterations, Lessee shall file or cause to be filed in the Official Records of the County of Los Angeles a Notice of Completion (the "Notice of Completion") with respect to the Improvements and Lessee shall deliver to County, at no cost to County, two (2) sets of conoflex or mylar final as-built plans and specifications of the Improvements.

5.6 Use of Plans. Contracts between Lessee and any architect, design professional or licensed contractor in connection with the construction, alteration or modification of Improvements on the Premises shall provide, in form and content reasonably satisfactory to County, for the assignment thereof to County as security to County for Lessee's performance hereunder, and County shall be furnished with a copy of any such contract, together with the further agreement of the parties thereto, that if this Lease is terminated by County due to Lessee's default, County may, at its election, use any plans and specifications created by such architect, design professional or contractor in connection with the contract, upon the payment of any sums due to any party thereto. County's right to elect to use plans and specifications as described above shall be limited to the Premises, and shall not include the unauthorized right to use any trade marks, trade names or logos of Lessee or any such architect, design professional or contractor.

5.7 Where Director Approval Not Required. Notwithstanding the foregoing, and notwithstanding anything to the contrary in this Article 5, Lessee shall not be required to seek or obtain the approvals of Director described in this Article 5 (including those set forth in Section 5.3) for Alterations (other than the Redevelopment Work) where all of the following conditions are satisfied: (i) the total cost of the project is less than One Hundred Twenty Five Thousand Dollars (\$125,000), adjusted annually to reflect the increase or decrease in the ENR Index from and after the Effective Date (provided, however, that in no event shall such adjustment result in a reduction of the threshold for Director approval to less than One Hundred Twenty Five Thousand Dollars (\$125,000)); (ii) none of the proposed construction activity is structural in nature; and (iii) none of the proposed construction, additions, modifications or changes affect or are visible from the exterior of the Premises; provided, however, that whenever Lessee makes or constructs or permits any improvements in or to the Premises, Lessee shall (a) give written notice thereof (including a description of the work to be done and the permits obtained for such work), and (b) furnish a copy of "as-built" plans upon completion of such work to County.

5.8 Protection of County. Nothing in this Lease shall be construed as constituting the consent of County, express or implied, to the performance of any labor or the furnishing of any materials or any specific Improvements, alterations or repairs to the Premises of any part thereof by any contractor, subcontractor, laborer or materialman, nor as giving Lessee or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in any such manner as would give rise to the filing of mechanics' liens or other claims against the Premises or County.

5.8.1 Posting Notices. County shall have the right at all reasonable times and places to post and, as appropriate, keep posted, on the Premises any notices which County may deem necessary for the protection of County, the Premises and the Improvements thereon from mechanics' liens or other claims. Lessee shall give County at least ten (10) business days prior written notice of the commencement of any work to be done on the Premises, in order to enable County timely to post such notices.

5.8.2 Prompt Payment. Lessee shall make, or cause to be made, prompt payment of all monies due and owing to all persons doing any work or furnishing any materials or supplies to Lessee or any of its contractors or subcontractors in connection with the Premises and the Improvements thereon. Lessee shall have the right to contest any such amount; provided, however, the entire expense of any such contest (including interest and penalties which may accrue) shall be the responsibility of Lessee.

5.8.3 Liens; Indemnity. Subject to Lessee's rights to contest the same prior to payment, Lessee shall keep the Premises and any Improvements thereon free and clear of all mechanics' liens and other liens arising out of or in connection with work done for Lessee and/or any parties claiming through Lessee. Lessee agrees to and shall indemnify, defend and hold County harmless from and against any claim, liability, loss, damages, costs, expenses, attorneys' fees incurred in defending and all other expenses on account of claims of lien(s) of laborers or materialmen or others for work performed or materials or supplies furnished to Lessee or persons claiming under it.

In the event any lien is recorded, Lessee shall, within twenty (20) days after demand, furnish the bond described in California Civil Code Section 3143, or successor statute, which results in the removal of such lien from the Premises, together with any other evidence requested by County to evidence that such claim will be paid, removed or discharged as a claim against the Premises and/or County.

5.9 Subsequent Renovations. Lessee covenants that throughout the Term the Premises and all Improvements shall be maintained as a first class shopping center of a quality at least comparable to other first class shopping centers in the West Los Angeles area that are similar in size and nature to the Premises (the "Renovation Standard"). Such obligation shall include requisite upgrades to building facades, storefronts, signage, roofs, common area lighting, common area landscaping and irrigation systems, and common area vehicle parking and striping surfaces. Lessee shall be required to perform periodic renovations and upgrades of the Improvements meeting the Renovation Standard in accordance with the following schedule (each, a "Subsequent Renovation"). The construction of the first Subsequent Renovation shall be (i) commenced by Lessee not earlier than the seventeenth (17<sup>th</sup>) anniversary of the Effective

Date and not later than the eighteenth (18<sup>th</sup>) anniversary of the Effective Date, and (ii) completed by Lessee not later than the twentieth (20<sup>th</sup>) anniversary of the Effective Date. The construction of the second Subsequent Renovation shall be (i) commenced by Lessee not earlier than the thirty-second (32<sup>nd</sup>) anniversary of the Effective Date and not later than the thirty-fourth (34<sup>th</sup>) anniversary of the Effective Date, and (ii) completed by Lessee not later than the thirty-fifth (35<sup>th</sup>) anniversary of the Effective Date. The construction of the third Subsequent Renovation shall be (i) commenced by Lessee not earlier than the forty-seventh (47<sup>th</sup>) anniversary of the Effective Date and not later than the forty-ninth (49<sup>th</sup>) anniversary of the Effective Date, and (ii) completed by Lessee not later than the fiftieth (50<sup>th</sup>) anniversary of the Effective Date.

Prior to the commencement of construction of a Subsequent Renovation, Lessee shall submit to Director, for Director's approval, a renovation plan for such Subsequent Renovation (a "Subsequent Renovation Plan"), which renovation plan shall (a) describe the proposed renovation work in comparable detail to the Renovation Plan described in Section 5.1 above, (b) include a design, governmental approval and construction schedule for the work described therein, (c) include a budget for all work costs, which budget shall be consistent with the Minimum Required Renovation Amount (as defined below) applicable to such Subsequent Renovation, and (d) address such other matters as Director reasonably requests. The Subsequent Renovation Plan shall be submitted by Lessee to County not later than such date as, taking into consideration the approval periods described in this Section 5.9 and Section 5.3 above, and the estimated time required to obtain all necessary governmental approvals and permits, will permit the commencement by Lessee of the applicable Subsequent Renovation by the date required under this Section 5.9. Director shall have sixty (60) days within which to approve or disapprove the Subsequent Renovation Plan. Failure of Director to notify Lessee in writing of its approval or disapproval of the Subsequent Renovation Plan shall be deemed Director's disapproval of the Subsequent Renovation Plan. Upon Director's approval of the Renovation Plan, Lessee shall proceed to satisfy all conditions in this Article 5 to the commencement of the Subsequent Renovation and to commence and complete the Subsequent Renovation in accordance with the Subsequent Renovation Plan and the terms and conditions of this Article 5. Lessee's failure to comply with the schedule approved by Director as part of Subsequent Renovation Plan and/or to meet the construction commencement and completion deadlines pertaining to the Subsequent Renovation set forth in this Section 5.9 shall, if not cured within the cure period set forth in subsection 13.1.2, constitute an Event of Default.

Notwithstanding the foregoing provisions of this Section 5.9, Lessee's obligation to make Subsequent Renovations to comply with the Renovation Standard as set forth in this Section 5.9 shall not be applicable to the storefront, facade and/or signage of any individual Sublessee premises (including, without limitation, the Ralphs grocery store premises) that are subleased by Lessee to a national or regional tenant to the extent that Lessee does not have the authority under the applicable Sublease to make renovations, or to require the Sublessee to make renovations, to such facade, storefront and/or signage to permit Lessee to comply with the requirements of this Section 5.9; provided, however, that Lessee shall use commercially reasonable efforts to arrange for such Sublessees to perform, or permit the performance of, upgrades that would permit Lessee to comply with the requirements of this Section 5.9; and provided, further, that upon the expiration or earlier termination of any such Sublease Lessee shall be obligated to upgrade or cause to be upgraded such Sublease premises to meet the Renovation Standard.



Lessee shall be required to expend at least the Minimum Required Renovation Amount for the cost of each Subsequent Renovation. The Minimum Required Renovation Amount for each respective Subsequent Renovation shall be the following aggregate amounts corresponding to the period from the Effective Date of this Lease (or, in the case of the second or third Subsequent Renovation, from the date of the completion of the most recent Subsequent Renovation) until the completion of such Subsequent Renovation: (A) one and one half percent (1.5%) per year of Gross Rent Revenues and Gross Receipts for each of the first five (5) years after the Effective Date, and (B) two percent (2%) per year of the Gross Rent Revenues and Gross Receipts for each year thereafter during the remaining Term of the Lease. Lessee shall receive a credit against the Minimum Required Renovation Amount for capital expenditures made by Lessee after the tenth (10<sup>th</sup>) anniversary of the completion of the Redevelopment Work to meet the Renovation Standard and that are approved by Director for purposes of this Section 5.9. For purposes of calculating the Minimum Required Renovation Amount, Gross Rent Revenues from the Ralphs grocery store premises shall be excluded until the date of the expiration or earlier termination of the existing Sublease with Ralphs that is in effect as of the Effective Date. Only those Subsequent Renovation costs that are approved by Director in accordance with this Section 5.9 shall be considered in determining Lessee's compliance with the requirements of this paragraph.

## 6. CONDEMNATION.

### 6.1 Definitions.

6.1.1 Condemnation. "Condemnation" means (1) the exercise by any governmental entity of the power of eminent domain, whether by legal proceedings or otherwise, and (2) a voluntary sale or transfer to any Condemnor (as hereafter defined), either under threat of Condemnation or while legal proceedings for Condemnation are pending.

6.1.2 Date of Taking. "Date of Taking" means the date the Condemnor has the right to possession of the Premises being condemned.

6.1.3 Award. "Award" means all compensation, sums or anything of value awarded, paid or received from a total or partial Condemnation.

6.1.4 Condemnor. "Condemnor" means any public or quasi-public authority, or private corporation or individual, having the power of eminent domain.

6.2 Parties' Rights and Obligations to be Governed by Lease. If, during the Term of this Lease, there is any taking of all or any part of the Premises, any Improvements on the Premises or any interest in this Lease by Condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this Article 6.

6.3 Total Taking. If the Premises are totally taken by Condemnation, this Lease shall terminate on the Date of Taking.

6.4 Effect of Partial Taking. If a portion of the Premises or the Improvements thereon are taken by Condemnation, this Lease shall remain in effect, except that Lessee may elect to

terminate this Lease if either (i) Improvements constituting more than twenty-five percent (25%) of the replacement cost of all of the Improvements on the Premises are taken by Condemnation, or (ii) a portion of the Premises is taken such that the parking ratio for the remaining Premises is reduced to less than 4.6 parking spaces per 1,000 square feet of the remaining Improvements and parking cannot reasonably be made available on the remaining portion of the Premises to meet the foregoing parking ratio. Lessee must exercise its right to terminate by giving County written notice of its election within ninety (90) days after the nature and extent of the taking and the probable amount of compensation have been determined. Such notice shall also specify the date of termination, which shall not be prior to the Date of Taking. Failure to properly exercise the election provided for in this Section 6.4 will result in this Lease's continuing in full force and effect, except that Annual Minimum Rent shall be abated pursuant to Section 6.5, below.

In the event that Lessee does not elect to terminate this Lease as provided above, then Lessee, whether or not the Awards or payments, if any, on account of such taking shall be sufficient for the purpose, shall, at its sole cost and expense, within a reasonable period of time, commence and complete restoration of the remainder of the Premises as nearly as possible to its value, condition and character immediately prior to such taking, taking into account, however, any necessary reduction in size or other change resulting from the taking; provided, however, that in case of a taking for temporary use, Lessee shall not be required to effect restoration until such taking is terminated.

**6.5 Effect of Partial Taking on Rent.** If any portion of the Premises is taken by Condemnation and this Lease remains in full force and effect as to the portion of the Premises not so taken (a "Partial Taking"), the Annual Minimum Rent shall be reduced as of the date of the Partial Taking to an amount equal to the Annual Minimum Rent multiplied by the ratio of the fair market value of the portion of the Premises not so taken to the fair market value of the entire Premises immediately prior to the Partial Taking. Upon the next Adjustment Date, as described in subsection 4.2.3 above, if any, for the purposes of adjusting the Annual Minimum Rent, all Annual Minimum Rent and Percentage Rent paid by Lessee to County prior to the date of the Partial Taking shall be adjusted, for the purposes of this calculation only, to the proportion that the fair market value of the portion of the Premises which remains after the taking bears to the fair market value of the entire Premises immediately prior to the taking. If the parties cannot agree upon the appropriate Annual Minimum Rent, the matter shall be settled through arbitration in the manner set forth in Article 16 hereof. Any determinations of fair market value made pursuant to this Section 6.5 in connection with any arbitration proceeding shall be predicated upon the "income approach" or "income capitalization approach" to property valuation, as defined in The Dictionary of Real Estate Appraisal and/or The Appraisal of Real Estate, published by the Appraisal Institute or any successor organization (the "Income Approach"). All other obligations of Lessee under this Lease, including but not limited to the obligation to pay Percentage Rent, shall remain in full force and effect.

**6.6 Waiver of Code of Civil Procedure Section 1265.130.** Each party waives the provisions of Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a Partial Taking of the Premises.

6.7 Payment of Award. Awards and other payments on account of a taking, less costs, fees and expenses incurred in the collection thereof ("Net Awards and Payments"), shall be applied as follows:

6.7.1 Partial Taking Without Termination. Net Awards and Payments received on account of a Taking other than a total Taking or a Partial Taking which results in termination hereof or a taking for temporary use shall be held by County and shall be paid out to Lessee or Lessee's designee(s), in progress payments, to pay the cost of restoration of the Premises. The balance, if any, shall be divided between County and Lessee pro rata, as nearly as practicable, based upon (1) the then value of County's interest in the Premises (including its interest hereunder) and (2) the then value of Lessee's interest in the remainder of the Term of this Lease including bonus value (for such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4). Any determinations of fair market value made pursuant to this Section 6.5 shall be predicated upon the Income Approach.

In case of a taking other than a total taking or a taking for temporary use, Lessee shall furnish to County evidence satisfactory to County of the total cost of the restoration required by Section 6.4.

6.7.2 Taking For Temporary Use. Net Awards and Payments received on account of a taking for temporary use shall be paid to Lessee; provided, however, that if any portion of any such award or payment is paid by the Condemnor by reason of any damage to or destruction of the Improvements, such portion shall be held and applied as provided in the first sentence of Section 6.7.1, above.

6.7.3 Total Taking and Partial Taking with Termination. Net Awards and Payments received on account of a total taking or a Partial Taking which results in the termination of this Lease shall be allocated in the following order:

First: There shall be paid to County an amount equal to the greater of (a) the sum of (1) the present value of all Annual Minimum Rent, Percentage Rent and other sums which would become due through the expiration of the Term if it were not for the taking less, in the event of a Partial Taking, an amount equal to the present value of the fair rental value of the portion of the Premises (with the Improvements thereon) not subject to the Partial Taking, from the date of the Partial Taking through the expiration of the Term and (2) the present value of the portion of the Premises (with the Improvements thereon) subject to the taking from and after the expiration of the Term or (b) in the event of a Partial Taking, the present value of the fair market rental value of the portion of the Premises (with the Improvements thereon) subject to the Partial Taking, from and after the expiration of the Term.

Second: There shall be paid to any Encumbrance Holder an amount equal to the sum of any unpaid principal amount of any Encumbrance secured by the Premises plus costs, expenses, and other sums due pursuant the loan documents, if any, and any interest accrued thereon, all as of the date on which such payment is made; and then

Third: There shall be paid to Lessee an amount equal to the value of Lessee's interest in the remainder of the Term of this Lease, including the value of the ownership interest in and use of the Improvements constructed on the Premises, determined as of the date of such taking, less payments made under paragraph Second above. For such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4.

Fourth: The balance shall be paid to County.

6.7.4 Disputes. Any dispute under Article 6 concerning the fair market value of the Premises or any portion thereof, computation of present value or the determination of the amount of Annual Minimum Rent or Percentage Rent or other sums which would have become due over the Term of this Lease which are not resolved by the parties, shall be submitted to arbitration pursuant to Article 16 of this Lease. Such valuations, computations and determinations of value shall be made utilizing the Income Approach.

## 7. SECURITY DEPOSIT.

7.1 Amount and Use. Lessee shall deliver to and maintain with County a security deposit (the "Security Deposit") in an amount equal to the sum of three (3) times the Monthly Minimum Rent in effect from time to time during the Term (i.e., adjusted to reflect any change in the Monthly Minimum Rent as of each Adjustment Date and Renegotiation Date). The Security Deposit shall secure Lessee's obligations pursuant to this Lease, and may be drawn on by County, in whole or in part, to cover (a) delinquent rent not paid by Lessee within any applicable notice and cure period, and (b) any other Events of Default of Lessee under this Lease. The Security Deposit shall be applied at the discretion of County. Lessee shall have the right to maintain the Security Deposit in form of cash or in the form of a certificate of deposit, letter of credit or other approved investment instrument acceptable to County with respect to form, content and issuer. As long as no Event of Default by Lessee exists under the Lease, Lessee shall be entitled to any interest or other earnings which are actually earned on any unapplied portions of the Security Deposit delivered to County in the form of a certificate of deposit or other approved investment instrument (as opposed to cash, on which Lessee shall not be entitled to interest). Provided that no Event of Default then exists under the Lease, at the end of each Lease Year Lessee shall be entitled to a credit for all unexpended interest accruing to Lessee's benefit with respect to the Security Deposit during such Lease Year pursuant to the immediately preceding sentence. Notwithstanding any contrary provision hereof, County shall have the right at any time to apply any accrued but uncredited interest (which accrued during non-Event of Default periods) against delinquent rents and other amounts owed by Lessee under the Lease.

If as of the first Adjustment Date and each Adjustment Date thereafter there have been no Events of Default by Lessee during the preceding three (3) year period (i.e., at no time during such preceding three (3) year period did Lessee commit a breach under the Lease and fail to cure such breach within the applicable cure period set forth in Section 13.1 of this Lease), then effective as of such Adjustment Date the Security Deposit required to be maintained by Lessee until the next Adjustment Date shall be decreased to two (2) times the Monthly Minimum Rent then in effect.

7.2 Replacement. In the event that some or all of the Security Deposit is drawn against by County and applied against any delinquent rent not paid by Lessee within any applicable notice or cure period, or against other Events of Default of Lessee hereunder, Lessee shall, within five (5) days after receipt of written notice of the amount so applied and the reasons for such application, deposit sufficient additional funds with County, and/or cause the issuer of any letter of credit to reinstate the letter of credit to its full face amount, so that at all times that this Lease is in effect (other than between the date of the application of funds by County and the expiration of said five (5) day period), the full amount of the Security Deposit shall be available to County. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in subsection 13.1.3, shall constitute an Event of Default hereunder.

7.3 Renewal. Any letter of credit procured by Lessee and delivered to County shall provide for notice to County by the issuer thereof no less than sixty (60) days prior to the expiration of the term of such letter of credit in the event that the issuer thereof is not irrevocably committed to renew the term of such letter of credit. In the event that, thirty (30) days prior to the expiration of such letter of credit, Lessee has not provided County with satisfactory evidence of its renewal or replacement, or has not provided County with adequate replacement security, County may draw down upon the letter of credit and hold the funds as security for Lessee's obligations as set forth in this Lease and may apply the funds to cover delinquent rent not paid by Lessee within any applicable notice and cure period and/or any other Event of Default of Lessee under this Lease.

## 8. INDEMNITY.

Except to the extent caused by the gross negligence or willful misconduct of any such indemnitee, Lessee shall at all times relieve, defend, indemnify, protect, and save harmless County and its respective Boards, officers, agents and employees from any and all claims, costs, losses, expenses or liability, including expenses and reasonable attorneys' fees incurred in defending against the same by an attorney selected by Lessee and reasonably satisfactory to County, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of County or any of its Board, officers, agents or employees, to the extent that such arises from or is caused by (a) the operation, maintenance, use, or occupation of the Premises by Lessee or its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees in connection with this Lease or the Premises, or (c) the failure of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees to observe and abide by any of the terms or conditions of this Lease or any applicable law, ordinance, rule, or regulation pertaining to this Lease or the Premises. The obligation of Lessee to so relieve, indemnify, protect, and save harmless County and each of its respective Boards, officers, agents and employees shall continue during any periods of occupancy or of holding over by Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, beyond the expiration of the Term or other termination of this Lease.

## 9. INSURANCE.

Lessee shall maintain, or cause to be maintained, at all times during the Term of this Lease policies of liability, worker's compensation and property insurance from companies authorized to transact business in the State of California by the Insurance Commissioner thereof.

9.1 Property Insurance. The policy of property insurance shall provide fire insurance with extended coverage, insuring against loss or damage by fire, lightning and the additional perils included in the standard extended coverage endorsement, as well as those included in the "all risk" policy, and burglary and theft insurance, on the structures, Improvements, inventory, trade fixtures, furnishings and equipment used or to be used by Lessee on the Premises. The policy shall provide standard fire and extended coverage insurance, and shall cover vandalism, malicious mischief, and those risks ordinarily defined in "All-Risk coverage." The policy shall also contain "business interruption", "rental interruption" and/or continuous operation coverage payable to County equal to one (1) year's Annual Minimum Rent. During periods of substantial construction on the Premises, Lessee or Lessee's contractor will provide completed value builder's risk insurance reasonably satisfactory to County, together with (i) broad form liability coverages by endorsement; and (ii) non owned, non hired automotive liability coverage with a policy limit of Two Million and 00/100 Dollars (\$2,000,000). Such insurance shall be in an amount equal to one hundred percent (100%) of the full replacement value of said buildings, structures, equipment, and Improvements (exclusive of foundations), with a deductible not greater than five percent (5%) of such replacement value) (as such replacement value is determined by such insurance company and approved by County's risk manager), and shall be placed and maintained with such insurance company or companies and in such form as shall be reasonably satisfactory to County.

9.2 Form of Policy. All such insurance policies, along with their endorsements, shall name the Major Sublessee, if any, County and its respective Board of Supervisors and members thereof, and County's officers, agents and employees, as additional insureds and any Encumbrance Holder as loss payee. Upon the occurrence of any loss, the proceeds of such property insurance shall be held by County in trust for the named insureds as their interests appear, and shall be disbursed by County on a monthly basis to pay for work completed in accordance with then-prevailing industry custom and practice. In the event of such loss Lessee shall be obligated to rebuild or replace the destroyed or damaged buildings, structures, equipment, and Improvements, in accordance with the procedures set forth hereinabove for the initial construction, except as otherwise provided in Article 11 hereof. Any surplus or proceeds after said rebuilding or replacement shall be distributed to Lessee.

Subject to the immediately following grammatical paragraph, a duplicate policy or policies evidencing such insurance coverage, in such form as shall be reasonably acceptable to County, shall be filed with Director no later than five (5) business days after the Effective Date, and such policy or policies shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to Director or ten (10) business days in case of cancellation for failure to pay the premium. At least ten (10) business days prior to the expiration of such policy, a certificate showing that such insurance coverage has been renewed shall be obtained by Lessee and filed with Director.

In lieu of submitting a copy of the policy or policies evidencing the above insurance, Lessee may submit in a form reasonably acceptable to County a certificate of insurance.

Any such policy may be issued in the form of a blanket policy insuring other properties, in form, amount and content reasonably satisfactory to County, taking into account any additional protection that County reasonably deems prudent to provide for losses related to such other properties.

9.3 Liability Insurance. Lessee shall maintain in full force and effect during the Term of this Lease, commercial general liability insurance together with premises operations, products, completed operations, advertising, independent contractor and contractual liability coverages, including liquor liability, with a combined single limit of not less than Ten Million Dollars (\$10,000,000) per occurrence, Twenty Million Dollars (\$20,000,000), annual aggregate. Lessee agrees that County and its respective Board of Supervisors and members thereof, and County's officers, agents, employees and volunteers, shall be named as additional insureds under such liability insurance policy or policies.

Subject to Lessee's option to provide a certificate of insurance as set forth below, a duplicate policy or policies evidencing such insurance coverage shall be obtained by Lessee and filed with Director no later than five (5) business days after the Effective Date, and said policy shall provide that such insurance coverage shall not be canceled or reduced without at least thirty (30) days prior written notice to Director or ten (10) business days in case of cancellation for failure to pay the premium. At least thirty (30) days prior to the expiration of any such policy, a policy showing that such insurance coverage has been renewed or extended shall be filed with Director.

The amounts of liability insurance required by this Section shall be subject to renegotiation as of each fifth (5th) anniversary of the Effective Date (each, an "Insurance Renegotiation Date"). If County and Lessee cannot agree upon the amount of insurance by the sixtieth (60th) day preceding an Insurance Renegotiation Date, the matter shall be resolved by binding arbitration in accordance with Article 16. In no event shall the amounts of liability insurance be decreased as a result of such renegotiation or arbitration. Following such renegotiation or arbitration, the parties shall execute an amendment to this Lease setting forth the renegotiated insurance provisions or the arbitration judgment, as appropriate.

In lieu of submitting a copy of the policy or policies evidencing the above insurance, Lessee may submit in a form reasonably acceptable to County a certificate of insurance.

Any such policy may be issued in the form of a blanket policy insuring other properties, in form, amount and content reasonably satisfactory to County, taking into account any additional protection that County reasonably deems prudent to provide for losses related to such other properties.

9.4 Worker's Compensation Insurance. Lessee shall maintain in force during the Term of this Lease, in an amount and with coverage in compliance with applicable California

law or, if no such law exists, then reasonably satisfactory to Director, Worker's Compensation Insurance.

9.5 Required Provisions. Lessee's insurance policies required by this Article 9 shall be for a term of not less than one year and shall additionally provide:

(a) that the full amount of any losses to the extent insurance proceeds are available shall be payable to additional insureds notwithstanding any act, omission or negligence of Lessee which might otherwise result in forfeiture of such insurance;

(b) in any property insurance policy, a waiver of all right of subrogation against County and its respective Board of Supervisors and members thereof, and County's officers, agents, employees and volunteers with respect to losses payable under such policies;

(c) in any property insurance policy, that such policies shall not be invalidated should the insured waive, prior to a loss, any or all right of recovery against any party for losses covered by such policies;

(d) that the policies shall provide coverage on a "primary basis" with respect to the additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain;

(e) that losses, if any, shall be adjusted with and payable to Lessee, County and Encumbrance Holders, if any, pursuant to a standard mortgagee clause;

(f) that such policies shall not be suspended, voided, canceled, reduced in coverage or in limits or materially changed without at least thirty (30) days prior written notice to County and all Encumbrance Holders or ten (10) business days in case of cancellation for failure to pay the premium;

(g) that the insurance shall apply separately to each insured against whom a claim is made, except with respect to the overall limits of said insurer's liability; and,

(h) that such policies shall contain no special limitations on the scope of protection afforded to the additional insureds, and no failure to comply with the reporting provisions of such policies shall affect the coverage afforded to such additional insureds.

9.6 Failure to Procure Insurance. Failure of Lessee to procure or renew the herein required insurance shall, if not cured within five (5) business days after written notice from County, constitute a default hereunder. In the event of such failure, in addition to the other rights and remedies provided hereunder, County may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith and all monies so paid by County shall be repaid by Lessee, with interest thereon at the Applicable Rate, to County within five (5) business days after demand.

## 10. MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.



10.1 Lessee's Maintenance and Repair Obligations. Lessee shall maintain the Premises, including paved or unpaved ground surfaces and Improvements thereon, in conformance with such reasonable rules and regulations regarding the use and occupancy of commercial projects in Marina del Rey (such as the Premises) as may be promulgated by County from time to time for general applicability on a non-discriminatory basis, as revised from time to time. Without limiting the foregoing, at Lessee's sole cost and expense, but subject to the terms and conditions of this Lease, Lessee shall keep and maintain, or cause to be kept and maintained, the Premises and all equipment, Improvements or physical structures of any kind which may exist or be erected, installed or made on the Premises in good and substantial repair and condition, including without limitation capital improvements and structural and roof repairs and replacement, and shall make all necessary repairs and alterations and replacements thereto, except as otherwise provided in this Article 10. Lessee shall undertake such repairs, alterations or replacements in compliance with Applicable Laws, and in compliance with the provisions of Article 5, to the extent applicable. Lessee shall maintain all Improvements on the Premises in a safe, clean, wholesome and sanitary condition, to the reasonable satisfaction of Director and in compliance with all Applicable Laws. Lessee shall, at its own cost and expense, install, maintain and replace landscaping between the streets abutting the Premises and the building footprints on the Premises as is reasonably necessary to create a pleasing development to the reasonable satisfaction of Director. Lessee specifically agrees to provide proper containers for trash and garbage which are screened from public view, to keep the Premises free and clear of rubbish and litter. County in its proprietary capacity shall have the right to enter upon and inspect the Premises at any reasonable time for cleanliness, safety and compliance with this Section 10.1, as long as such entrance is not done in a manner which would unreasonably interfere with the operation of the Premises. Lessee's obligation to maintain and restore is absolute, and is not in any way dependent upon the existence or availability of insurance proceeds, except as otherwise provided in this Article 10. Restoration shall take place in accordance with the provisions of Article 5.

10.2 Maintenance Deficiencies. If County provides written notice to Lessee of a deficiency or other breach in the performance by Lessee of the maintenance and repair obligations of Lessee under Section 10.1 above, then Lessee shall promptly commence the cure thereof and shall complete such cure within the time period for such cure set forth in the County's deficiency notice, which cure period shall not be less than thirty (30) days except if the deficiency pertains to a condition that is a threat to health or safety or otherwise constitutes an emergency situation, in which case County shall have the right to immediately require Lessee to take all appropriate steps to avoid damage or injury. If Lessee fails to cure any such deficiency within the cure period set forth in County's deficiency notice (which cure period shall comply with the requirements of the immediately preceding sentence of this Section 10.2), then in addition to, and not in lieu of, any rights or remedies that County may have under Article 13 of this Lease for defaults not cured within the applicable notice and cure periods set forth therein, Lessee shall pay to County an amount equal to One Hundred Dollars (\$100) per day per item of deficiency for each day after such cure period that the deficiency item remains uncured; provided, however, if the nature of the deficiency is such that it is not capable of cure within the cure period specified in County's notice (for example, as a result of permitting requirements or construction material procurement delays beyond the control of Lessee), then as long as during the specified cure period Lessee commences the cure of the deficiency and thereafter continues the prosecution of the completion of such cure in a manner and with such diligence that will

effectuate the cure in as short a period as reasonably possible, then the cure period specified in County's deficiency notice shall be extended for such additional time as necessary to complete the cure in as short a period as reasonably possible.

For purposes of determining the number of items of deficiency set forth in a deficiency notice received from the County, County shall reasonably identify the separate deficiencies so as not to unfairly increase the daily amount payable under this Section 10.2 by separating the work into unreasonably particularized items (e.g., the requirement to paint the exterior of a building shall not be split into individual deficiency items for the painting of each individual door, window or other component of such building). If a cited deficiency is not health or safety related and does not otherwise constitute an emergency, and if in the reasonable and good faith business judgment of Lessee the deficiency notice was erroneously issued by County, then Lessee shall have the right to contest such deficiency notice by written notice to Director within five (5) business days after the date the deficiency notice is received by Lessee. If Lessee files any such contest with Director, then Director shall have the right, in the exercise of Director's discretion, to consider such contest. If Lessee's contest is made on a reasonable and good faith basis, then the cure period for the deficiency notice shall be tolled during the period between the date Director receives written notice of such contest and continuing until Director notifies Lessee in writing that either Director denies Lessee's contest or that Director has determined not to consider such contest. The One Hundred Dollars (\$100) per diem amount set forth in this Section 10.2 shall be adjusted every three (3) years during the remaining Lease Term on each third (3<sup>rd</sup>) anniversary of the Effective Date to reflect any change in the Consumer Price Index over the three (3) year period immediately preceding each such adjustment. If Lessee fails to pay any amounts payable by Lessee under this Section 10.2 within ten (10) days after written notice from County, then County shall have the right to draw on the Security Deposit to cover such unpaid amounts.

**10.3 Option to Terminate Under Certain Circumstances.** In the event of any damage to or destruction of the Premises, or any Improvements located thereon, Lessee shall, except as otherwise expressly provided in this Section 10.3, promptly (taking into consideration the necessity of obtaining approvals and permits for such reconstruction) repair and/or restore such Improvements to their condition existing prior to the damage or destruction. Except as otherwise expressly provided in this Section 10.3, such obligation to repair and restore is absolute, and is in no way dependent upon the existence or availability of insurance proceeds. Repair and restoration of any damage or destruction shall take place in accordance with the provisions of Article 5.

Notwithstanding the foregoing, provided that Lessee complies with all of the provisions of subsections 10.3.1 through 10.3.4 below, Lessee shall have the option to terminate this Lease and be relieved of the obligation to restore the Improvements on the Premises if (a) all or substantially all of the Improvements on the Premises are substantially damaged or destroyed and such damage or destruction resulted from a cause not insured against by Lessee and not required to be insured against by Lessee under this Lease (an "Uninsured Loss"), or (ii) during the last five (5) years of the Term the Improvements on the Premises are damaged or destroyed and the cost of repair and restoration exceeds twenty-five percent (25%) of the total replacement cost of all of the Improvements on the Premise immediately prior to the damage or destruction. The following shall be conditions precedent to Lessee's right to terminate the Lease and be

relieved of the obligation to restore the Improvements on the Premises pursuant to this paragraph:

10.3.1 No more than one hundred (100) days following the date of the damage or destruction Lessee shall notify County of its election to terminate this Lease; to be effective, this notice must include both a copy of Lessee's notification to the Encumbrance Holder, if any, of Lessee's intention to exercise this option to terminate and Lessee's certification under penalty of perjury that Lessee has delivered or mailed such notification to the Encumbrance Holder in accordance with this subsection 10.3.1. County shall be entitled to rely upon the foregoing notice and certification as conclusive evidence that Lessee has notified the Encumbrance Holder regarding Lessee's desire to terminate this Lease.

10.3.2 Lessee shall assign to County and County shall be entitled to retain all insurance proceeds payable in connection with the event of damage or destruction, and, if requested by County Lessee shall, no more than sixty (60) days following the giving of the notice required by subsection 10.3.1 or such longer time as may be reasonable under the circumstances, remove all debris and other rubble from the Premises; secure the Premises against trespassers, and, at County's election, remove all remaining Improvements from the Premises so that the Premises are surrendered to County in the condition required under this Lease on the expiration or earlier termination thereof. If County shall require Lessee to demolish and remove from the Premises the remaining Improvements, County shall make available to Lessee any insurance proceeds received from Lessee's insurance necessary to pay for the cost of such demolition and removal, but no shortfall in the amount of such insurance proceeds shall relieve Lessee of its obligations under this subsection 10.3.2.

10.3.3 No more than sixty (60) days following the loss, Lessee shall deliver to County a quitclaim deed to the Premises in recordable form, in form and content satisfactory to County and/or with such other documentation as may be reasonably requested by County or any title company on behalf of County, terminating Lessee's interest in the Premises and reconveying such interest to County free and clear of any and all Encumbrances and Subleases.

10.3.4 Within ten (10) days following the County's receipt of the notice referred to in subsection 10.3.1, County has not received a written notice from the Encumbrance Holder, if any, objecting to such termination or an agreement containing an effective assignment of Lessee's interest in this Lease to such Encumbrance Holder whereby such Encumbrance Holder expressly assumes and agrees to be bound by and perform all of Lessee's obligations under this Lease.

10.4 No Option to Terminate for Other Casualty. Except as expressly provided in Section 10.3 above, Lessee shall have no option to terminate this Lease or otherwise be relieved of its obligation to restore the Improvements on the Premises in the case of any damage to or destruction of the Premises or the Improvements located thereon.

10.5 No County Obligation to Make Repairs. County shall have no obligation whatsoever to make any repairs or perform any maintenance on the Premises.

10.6 Repairs Not Performed by Lessee. If Lessee fails to make any repairs or replacements as required, Director may notify Lessee of said failure in writing, and should Lessee fail to cure said failure and make repairs or replacements within a reasonable time as established by Director, County may make such repairs or replacements and the cost thereof, including, but not limited to, the cost of labor, overhead, materials and equipment, shall be charged against Lessee as provided in Section 13.5.

10.7 Other Repairs. Although having no obligation to do so, County may, at its own cost and at its sole discretion, perform or permit others to perform any necessary dredging, filling, grading or repair of water systems, sewer facilities, roads, or other County facilities on or about the Premises.

10.8 Notice of Damage. Lessee shall give prompt notice to County of any fire or damage affecting the Premises from any cause whatsoever.

10.9 Waiver of Civil Code Sections. The parties' rights shall be governed by this Lease in the event of damage or destruction. The parties hereby waive the provisions of California Civil Code Section 1932 and any other provisions of law which provide for contrary or additional rights.

## 11. ASSIGNMENT AND SUBLEASE.

### 11.1 Subleases.

11.1.1 Definition. The term "Sublease" shall mean any lease, license, permit, concession or other interest in the Premises (including, without limitation, the Improvements), or a right to use the Premises or a portion thereof, which is conveyed or granted by Lessee to a third party, and which constitutes less than the unrestricted conveyance of the entire Lessee's interest under this Lease. "Sublessee" shall be the person or entity to whom such right to use is conveyed by a Sublease. A Sublease which grants or conveys to the Sublessee the right to possess or use all or substantially all of the Premises is sometimes referred to in this Lease as a "Major Sublease" and the Sublessee under such agreement is sometimes referred to in this Lease as a "Major Sublessee".

11.1.2 Approval Required. At least thirty (30) days prior to the proposed effective date of any Sublease that is not a Major Sublease, or of any amendment or assignment of such Sublease, Lessee shall submit a copy of such Sublease, amendment or assignment to Director for approval, which approval shall be given or withheld at Director's sole and absolute discretion. To the extent practical, Director shall approve or disapprove said proposed Sublease, amendment or assignment within thirty (30) days after receipt thereof. In no event, however, shall any such Sublease, amendment or assignment be made or become effective without the prior approval of Director. Each such Sublease shall specifically provide that the Sublessee shall comply with all of the terms, covenants, and conditions of this Lease applicable to the portion of the Premises subject to the Sublease.

11.1.3 Major Sublease. Lessee shall enter into a Major Sublease only with a reputable owner or manager of comparable retail facilities such as exist on the Premises. In light of the inherent detailed nature of a Major Sublease, Lessee shall deliver to County a copy of any proposed Major Sublease, or any sub-sublease or any other document pursuant to which an interest is proposed to be transferred in all or substantially all of the Premises, not less than sixty (60) days prior to the proposed effective date of such proposed Major Sublease or other document, for County's review and approval pursuant to the procedures and requirements specified in Section 11.2.

11.1.4 Recognition Agreements. Subject to the terms and conditions set forth in this subsection 11.1.4, upon Lessee's written request concurrent with Lessee's written request for County's approval of a Qualifying Sublease (as defined below), County agrees to execute a recognition agreement ("Recognition Agreement") with respect to such Qualifying Sublease. Such Recognition Agreement shall provide that if this Lease is terminated due to an Event of Default by Lessee that County will recognize such Qualifying Sublease as a direct lease between County and the Sublessee thereunder, subject to the terms and conditions of this subsection 11.1.4. "Qualifying Sublease" shall mean (a) a Major Sublease; (b) a Sublease pertaining to five thousand (5,000) or more gross leasable square feet in the Improvements; or (c) up to ten (10) other Subleases in effect at any one time that individually pertain to less than five thousand (5,000) square feet and in which the Sublessee is a national or regional tenant.

County's obligation to enter into a Recognition Agreement with respect to a Qualifying Sublease shall be subject to the following terms and conditions: (i) the Sublessee shall be a tenant that meets the requirements of Lessee and other landlords of comparable first class retail shopping center projects with regard to financial creditworthiness, reputation and experience; (ii) the rent and other terms and conditions of the Qualifying Sublease shall be consistent with the prevailing market rents and other terms and conditions of similar tenant leases at comparable first class retail shopping center projects; (iii) County shall not be liable under the Qualifying Sublease for any act or omission of Lessee, and County shall be responsible for performing only those obligations of Lessee accruing after the date of the termination of this Lease and County's reacquisition of possession of the Premises; (iv) County shall not be subject to any offsets or defenses that the Sublessee may have against Lessee; (v) the Sublessee shall not be entitled to a credit for any rent or other amounts that may have been paid by Sublessee to Lessee; (vi) County shall have no obligation to make or pay for any improvements (including without limitation any tenant improvement allowance), commissions, lease takeover payments, or other tenant concession payments due in connection with the Qualifying Sublease, nor may any such amounts be offset against rent payable under the Qualifying Sublease; (vii) the Sublessee shall make full and complete attornment to County as landlord, pursuant to a written agreement in form acceptable to County and executed by County and the Sublessee, so as to establish privity of contract between County and the Sublessee with the same force and effect as though the Sublease was originally made directly between County and the Sublessee; (viii) County shall not be bound by or obligated to perform any terms or conditions of the Qualifying Sublease that are inconsistent with the terms or conditions of this Lease or that increase County's obligations under this Lease; (ix) if the term of the Qualifying

Sublease, including extension options, is longer than twenty (20) years, then County shall have the right to approve the terms and conditions, including rental rate, of the Qualifying Sublease; (x) as of the date of the termination of this Lease the Sublessee shall not be in breach or default of the Qualifying Sublease (after notice and the lapse of any applicable grace or cure period); (xi) the Sublessee shall not be a person or entity that is directly or indirectly affiliated with Lessee; and (xii) the term of the Qualifying Sublease shall not extend beyond the scheduled Term of this Lease.

11.2 Approval of Assignments and Major Subleases. Except as specifically hereinbefore provided in this Article 11, Lessee shall not, without the prior written consent of County, which shall be based upon factors described in Exhibit C hereto, which is incorporated herein by this reference ("Assignment Standards"), either directly or indirectly give, assign, hypothecate, encumber, transfer, or grant control of this Lease or any interest, right, or privilege therein (including without limitation the right to manage or otherwise operate the Improvements located from time to time on the Premises), or enter into a Major Sublease affecting the Premises, or license the use of the all or substantially all of the Premises. Any Change of Ownership that is not an Excluded Transfer under subsection 4.6.2 shall constitute an assignment of Lessee's interest under this Lease. In addition, for purposes of this provision, the following shall require the prior written consent of County to be effective: (1) the addition, removal or replacement of one or more general partners or managing members in a Lessee which is a limited partnership or limited liability entity, except (a) by death, insolvency, incapacity, resignation (except for a sole general partner, if any) or removal of a general partner or managing member and his replacement by a vote of the limited partners, the remaining general partners or remaining members, or (b) if any general partner or managing member owning more than fifty percent (50%) of the interests of the partnership or limited liability entity acquires the interest of another general partner or managing member owning fifteen percent (15%) or less of the interests in the partnership or limited liability entity; (2) the sale, assignment, or transfer of fifty-percent (50%) or more of the stock in a corporation which owns or is a general partner or managing member of a partnership or limited liability entity owning an interest in this Lease. Lessee shall provide County with any information reasonably requested by County in order to determine whether or not to grant approval of the assignment as provided herein. These same limitations and approval requirements shall apply with respect to the Sublessee's interest under a Major Sublease.

11.2.1 County's Use of Discretion and Limitation on Permissible Assignees. In exercising its discretion to approve assignments as provided in this Section 11.2, County shall take into account the Assignment Standards and, if County determines that such Assignment Standards are satisfied, County shall not unreasonably withhold or delay its consent to any proposed assignment.

11.2.2 Involuntary Transfers Prohibited. Except as otherwise specifically provided in this Lease, neither this Lease nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Lessee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Lessee, or by any process of law including proceedings under the Bankruptcy Act.

11.2.3 Procedure. Requests for approval of any proposed assignment shall be processed in accordance with the following procedures:

11.2.3.1 Prior to entering into any agreement requiring the approval of County pursuant to this Sections 11.1 or 11.2, Lessee (or the entity seeking approval of such assignment) shall notify County and deliver to County all information relevant to the proposed assignment, including without limitation any term sheets, letters of intent, draft Major Subleases, any other documents which set forth any proposed agreement regarding the Premises and the information set forth in subsection 11.2.3.5. County will evaluate the information provided to it and County may request additional information as may be reasonably necessary to act on the request. Under no circumstances will County formally discuss an assignment with any proposed assignee prior to reviewing the proposal with Lessee.

11.2.3.2 In completing its review of the proposal and granting or withholding its consent thereto, County will not be bound by any deadline contained in any proposed assignments, Major Subleases, escrow instructions or other agreements to which County is not a party.

11.2.3.3 Lessee acknowledges that the time needed for County to review a proposed assignment depends on many factors, including without limitation the complexity of the proposed transaction, the financial and other information submitted for review, and the workload of County's personnel. Notwithstanding the foregoing, County shall act as promptly as governmental processes permit in processing and acting upon a requested approval of an assignment of Lessee's interest under this Article 11.

11.2.3.4 Lessee shall be required to reimburse County for County's Actual Costs incurred in connection with the proposed assignment, whether or not County ultimately grants its approval to the proposed assignment. However, in the event that County approves the proposed assignment, Lessee shall receive a credit toward those costs to the extent that an Administrative Charge is paid in connection with the assignment.

11.2.3.5 Lessee or the proposed assignee shall provide County with sufficient information for County to determine if the public interest will be served by approving the proposed transaction. The information that must be provided includes, but shall not be limited to, the following:

(a) Nature of the Assignee. Full disclosure is required in accordance with this Lease and County's applicant disclosure policy then in effect. Additionally, a flowchart identifying the chain of ownership of the assignee and its decision-making authority shall be provided to County. County shall be advised if the proposed assignee, or any other person or entity for whom disclosure is required pursuant to County's disclosure policy, has had any leasehold or concessionaire's interest canceled or terminated by the landlord due to the tenant or Lessee's breach or default thereunder;

(b) Financial Condition of Assignee. County shall be provided with current, certified financial statements, including balance sheets and profit and loss statements, demonstrating the proposed assignee's financial condition for the preceding five (5) years, or such shorter period that assignee has been in existence. This requirement shall also apply to any related person or entity which will be responsible for or guarantee the obligations of the proposed assignee or provide any funds or credit to such proposed assignee.

(c) Financial Analysis. County shall be provided with the proposed assignee's financing plan for the operation of the Premises and for any contemplated improvement thereof, demonstrating such proposed assignee's financial capability to so operate the Premises and construct such improvements. Such financing plan shall include, but not be limited to, information detailing (1) equity capital; (2) sources and uses of funds; (3) terms of financing; (4) debt service coverage and ratio; and (5) loan to value ratio. The proposed assignee shall also provide County with documentation demonstrating such proposed assignee's financial viability, such as letters of commitment from financial institutions which demonstrate the availability of sufficient funds to complete any proposed construction or improvements on the Premises. Further, such proposed assignee shall authorize the release of financial information to County from financial institutions relating to the proposed assignee or other information supplied in support of the proposed assignment.

(d) Business Plan. County shall be provided with the proposed assignee's business plan for the Premises, if applicable, including pro forma financial projections for the Premises for the five (5) year period beginning upon the commencement of the proposed assignment. Such pro forma projections will include capital costs, income and expenses, as well as debt service and all other payments to providers of debt and equity, and will be accompanied by a statement of basic assumptions and an identification of the sources of the data used in the production of such projections.

(e) Assignor's Financial Statements. County shall be provided with certified financial statements, including balance sheets and profits and loss statements concerning the assignor Lessee and its operations for the three (3) most recent years prior to the proposed transaction.

(f) Cure of Defaults. County shall be provided with the proposed assignee's specific plans to cure any and all delinquencies under this Lease which may be identified by County, whether identified before or after the date of the proposed assignment.

(g) Prospectus Materials. County shall be provided with any materials distributed to third parties relating to the business of the proposed assignee to be conducted on, from or relating to the Premises.

(h) Other Information. County shall be provided with a clear description of the terms and conditions of the proposed assignment, including a description of the proposed use of the Premises and any proposed alterations or improvements to the Premises. Additionally, County shall be provided with any and all other information



which it reasonably requests of Lessee in connection with its review of the proposed transaction, including without limitation materials pertinent to the issues noted in this subsection to the extent that they exist, such as escrow instructions, security agreements, personal property schedules, appraisals, market reports, lien releases, UCC Statements, preliminary title reports, management agreements affecting the Premises, contracts in excess of \$25,000 affecting the Premises, schedules of pending or threatened litigation, and attorneys' closing opinions relating to Lessee, the proposed assignee or the Premises. County shall endeavor to keep the foregoing materials confidential, subject to the Public Records Act and other Applicable Laws.

11.2.3.6 Estoppel Certificate and Nondisturbance. At the request of Lessee, County shall agree to execute an estoppel certificate and a subordination, nondisturbance and attornment agreement on commercially reasonable terms in favor of any Major Sublessee.

11.2.3.7 Final Documents. Prior to granting its approval over any proposed assignment, County shall be provided with an executed Assignment and Acceptance of Assignment in form and content as approved or supplied by the County. Ten (10) copies of each must be submitted to County, of which five (5) shall be signed originals and properly acknowledged.

11.2.4 County Right to Recapture. If Lessee proposes to assign its interest in this Lease or the Premises, proposes to enter into any Major Sublease affecting the Premises or proposes to transfer a Controlling Interest in the leasehold (with any such proposed transaction herein referred to as a "Proposed Transfer"), it shall provide County with written notice of such desire, which notice shall include the sale price ("Lessee Sale Price") at which it is willing to consummate the Proposed Transfer. For purposes hereof, a "Controlling Interest" in the leasehold shall mean seventy five percent (75%) or more of the direct or indirect beneficial ownership of the capital and profits interests in Lessee. Within thirty (30) days after receipt of Lessee's notice of a Proposed Transfer, County shall provide Lessee with written notification as to whether it has elected to acquire an option to purchase the interest subject to the Proposed Transfer. During said thirty (30) day period, Lessee may continue to market the interest subject to the Proposed Transfer, provided that such interest is offered subject to County's rights as provided herein. In the event that, prior to the expiration of said thirty (30) day period, County has given notice to Lessee that it has elected to acquire said option, County shall have an assignable option to purchase the interest subject to the Proposed Transfer ("County Option") at the Lessee Sale Price. Such County Option shall have a term of five (5) calendar months from the date of County's notice of its election to acquire such option. During the term of the County Option, Lessee shall make the Premises and its books and records reasonably available for inspection by County and third parties as reasonably requested by County.

In the event that County causes Lessee to issue the County Option and subsequently declines to purchase the interest subject to the Proposed Transfer at the Lessee Sale Price, then County shall pay to Lessee within thirty (30) days of the expiration of the County Option period (or, at County's election, credit to Lessee against the next applicable installment(s) of Annual Minimum Rent and Percentage Rent), a sum

(the "County Option Price") which represents (i) three percent (3%) of the Lessee Sale Price, plus (ii) seven percent (7%) interest per annum on said three percent (3%) of the Lessee Sale Price, from the date Lessee received notice of County's election to receive the County Option through the date on which the County Option Price, together with interest thereon, is paid or credited in full. If County either (a) fails to elect to acquire the County Option within said thirty (30) day period, or (b) gives notice that it has elected not to acquire the interest subject to the Proposed Transfer, then during the ensuing nine (9) month period after the date (the "Trigger Date") which is the earlier of such notice or the expiration of such thirty (30) day period, Lessee shall be entitled to enter into an agreement with a third party for the Proposed Transfer (subject to County's approval rights as otherwise set forth in this Lease) so long as (1) the Proposed Transfer price is equal to or greater than the Lessee Sale Price last offered to County and upon no more favorable material other terms than those offered to County, and (2) the closing of the Proposed Transfer is actually consummated within twelve (12) months after the Trigger Date (which twelve (12) month period shall be extended to the extent the closing is delayed due to a delay by County in approving the transaction within sixty (60) days after County has received a notice from Lessee requesting County's approval of such transaction and all information required by County under this Lease to permit County to evaluate the transaction).

In the event of a proposed Major Sublease or other permitted assignment of less than all of the Premises, County's election shall pertain to such portion of the Premises which is the subject of the proposed Major Sublease or assignment and, in the event that County elects to acquire such portion of Lessee's interest in the Premises, Lessee's Annual Minimum Rent shall be proportionally reduced (based on the projected decrease in the Percentage Rent that will be payable under this Lease after the recapture) and Lessee's obligation to pay Percentage Rent shall pertain only to the amounts derived from the portion of the Premises retained by Lessee. In the event that County elects to recapture all or any portion of the Premises as provided herein, Lessee agrees to execute promptly a termination agreement and such other documentation as may be reasonably necessary to evidence the termination of this Lease, to set a termination date and to prorate rent and other charges with respect to the termination. Notwithstanding any contrary provision hereof, County's rights pursuant to this subsection 11.2.4 shall not apply to (I) Financing Events, or (II) those events identified in subsection 4.6.2 of this Lease.

**11.2.5 County Credits Toward Purchase Price.** In the event that County or its assignee elects to exercise the County Option, it shall receive the following credits toward the Lessee Sale Price: (1) the Net Proceeds Share which would be payable to County in the event that a third party were to purchase the interest offered at the Lessee Sale Price and (2) an amount which represents unpaid Annual Minimum Rent, Percentage Rent, and all other amounts payable under the Lease, if any, with late fees and interest as provided herein, from the end of the period most recently subject to County audit through the date of the purchase of the interest by County, as reasonably estimated by County. In lieu of the credit described in (2) above, Lessee may provide County with a letter of credit or other security satisfactory to County to secure the payment of such unpaid amounts when finally determined by County. During the term of the County

Option, Lessee shall cause to be available to County all books and records reasonably necessary in order to determine the amount of such unpaid Annual Minimum Rent, Percentage Rent, and other amounts payable under the Lease. Upon the final determination of any amount that was the subject of an estimate as provided above, County or Lessee, as the case may be, shall within thirty (30) days after such determination, return or pay to the other party the amount, if any, by which such estimate was in excess of, or less than, the final determination. In the event that County or its assignee exercises the County Option, but the transaction fails to close due to a failure of the parties to agree upon an appropriate allowance for such unpaid Annual Minimum Rent, Percentage Rent, and other amounts or appropriate security for the payment thereof, then County shall have no obligation to pay or credit to Lessee the County Option Price.

11.3 Terms Binding Upon Successors, Assigns and Sublessees. Except as otherwise specifically provided for herein, each and all of the provisions, agreements, terms, covenants, and conditions herein contained to be performed, fulfilled, observed, and kept by Lessee hereunder shall be binding upon the heirs, executors, administrators, successors, and assigns of Lessee, and all rights, privileges and benefits arising under this Lease in favor of Lessee shall be available in favor of its heirs, executors, administrators, successors, and assigns. Notwithstanding the foregoing, no assignment or subletting by or through Lessee in violation of the provisions of this Lease shall vest any rights in any such assignee or Sublessee. Any approved assignment of this Lease shall release the assignor of all liability arising due to actions or omissions on or after the effective date of such assignment, provided the assignee assumes all of such liability, including without limitation the obligation of assignee to cure any defaults and delinquencies under this Lease and to pay County Percentage Rent and any other amounts attributable to the period prior to the assignment, but not discovered by County or the assignee until after the assignment; provided, further, the assignor shall not be relieved of any liability for the payment of the Administrative Charge or the required portion of any Net Proceeds Share or Net Refinancing Proceeds which arise upon such assignment as provided herein.

## 12. ENCUMBRANCES.

### 12.1 Financing Events.

12.1.1 Definitions. For the purposes of this Lease, including without limitation the provisions of Sections 4.6 through 4.8 hereof: (i) a "**Financing Event**" shall mean any financing or refinancing consummated by Lessee or by the holders of partnership or limited liability company interests or other direct or indirect ownership interests in Lessee (collectively, "**Ownership Interests**"), whether with private or institutional investors or lenders, where such financing or refinancing is an Encumbrance (as defined below); for purposes of Section 12.1.2 below and Sections 4.6 through 4.8 above, a "Financing Event" shall also include all of the foregoing actions involving the granting of a mortgage, deed of trust or other security interest in a Major Sublease; and (ii) an "**Encumbrance**" shall mean any direct or indirect grant, pledge, assignment, transfer, mortgage, hypothecation, grant of control, grant of security interest, or other encumbrance, of or in (A) all or any portion of Lessee's interest under this Lease and the estate so created (including without limitation a direct or indirect assignment of Lessee's

right to receive rents from subtenants) or (B) Ownership Interests if an absolute assignment from the holder of such Ownership Interests to the holder of the Encumbrance would have required County's consent under this Lease, to a lender (upon County approval of the Encumbrance and consummation thereof, the "**Encumbrance Holder**") as security for a loan. The term "**Encumbrance Holder**" shall also be deemed to include any and all affiliates of such Encumbrance Holder which have succeeded by assignment or otherwise to any rights, interests or liabilities of the Encumbrance Holder with respect to the Encumbrance, or which have been designated by the Encumbrance Holder to exercise any rights or remedies under the Encumbrance or to take title to the leasehold estate under this Lease or to Ownership Interests, and such affiliates shall enjoy all of the rights and protections given to Encumbrance Holders under this Lease. The term "**Equity Encumbrance Holder**" shall mean an Encumbrance Holder holding an Encumbrance with respect to Ownership Interests.

12.1.2 County Approval Required. Lessee may, with the prior written consent of Director, which shall not be unreasonably withheld, and subject to any specific conditions which may be reasonably imposed by Director, consummate one or more Financing Event(s). Lessee shall submit to Director a preliminary loan package and thereafter a complete set of all proposed transaction documents in connection with each proposed Financing Event. The preliminary loan package shall include the loan commitment and any other documents, materials or other information reasonably requested by Director. Lessee shall have the right, but not the obligation, to include draft loan documents in the preliminary loan package. Director shall have sixty (60) days to grant or withhold approval of the preliminary loan package. Director shall have sixty (60) days after receipt of substantially complete loan documents conforming to the approved preliminary loan package in which to grant or withhold final approval of the Financing Event; provided, however, that if the preliminary loan package included draft loan documents which have not been materially changed, then the foregoing sixty (60) day period shall be reduced to thirty (30) days. If not approved by Director in writing within the foregoing periods, the proposed Financing Event shall be deemed disapproved by Director (and, if so requested in writing by Lessee, Director shall within thirty (30) days of such request deliver to Lessee a written description of Director's objections to said proposed Financing Event). Lessee shall reimburse County for County's Actual Cost incurred in connection with its review of the proposed Financing Event. One (1) copy of any and all security devices or instruments as finally executed or recorded by the parties in connection with any approved Encumbrance shall be filed with Director not later than seven (7) days after the effective date thereof. The same rights and obligations set forth above in this subsection 12.1.2 shall inure to the benefit of and shall be binding upon any holder of Ownership Interests with respect to any proposed Financing Event involving Ownership Interests.

## 12.2 Consent Requirements in the Event of a Foreclosure Transfer.

12.2.1 Definitions. As used herein, a "**Foreclosure Transfer**" shall mean any transfer of the entire leasehold estate under this Lease or of all of the Ownership Interests in Lessee pursuant to any judicial or nonjudicial foreclosure or other enforcement of remedies under or with respect to an Encumbrance, or by voluntary deed or other transfer

in lieu thereof. A "**Foreclosure Transferee**" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title to the entire leasehold estate under this Lease or to all of the Ownership Interests in Lessee pursuant to a Foreclosure Transfer. An "**Equity Foreclosure Transferee**" shall mean a Foreclosure Transferee whose acquired interest consists of all of the Ownership Interests in Lessee.

12.2.2 Foreclosure Transfer. The consent of County shall not be required with respect to any Foreclosure Transfer.

12.2.3 Subsequent Transfer By Encumbrance Holder. For each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, with respect to a single subsequent transfer of this Lease or the Ownership Interests (as applicable) by such Encumbrance Holder to any third party, (i) County's consent to such transfer shall be required, but shall not be unreasonably withheld or delayed, and the scope of such consent (notwithstanding anything in this Lease to the contrary) shall be limited to County's confirmation (which must be reasonable) that the Lessee following such transfer has sufficient financial capability to perform its remaining obligations under this Lease as they come due, along with any obligation of Lessee for which the Foreclosure Transferee from whom it receives such transfer is released under subsection 12.3.1 below, and (ii) such transferee (other than a transferee of Ownership Interests) shall expressly agree in writing to assume and to perform all of the obligations under this Lease, other than Excluded Defaults (as defined below). For clarification purposes, the right to a single transfer under this Section shall apply to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, so that there may be more than one "single transfer" under this Section.

12.3 Effect of Foreclosure. In the event of a Foreclosure Transfer, the Encumbrance Holder shall forthwith give notice to County in writing of such transfer setting forth the name and address of the Foreclosure Transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

12.3.1 Any Encumbrance Holder which is a commercial bank, savings bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity fund, mortgage conduit, real estate investment trust, commercial finance lender or other similar financial institution which ordinarily engages in the business of making, holding or servicing commercial real estate loans, including any affiliate thereof (an "**Institutional Lender**"), shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults as defined below) accruing during its period of ownership of the leasehold. Upon a subsequent transfer of the leasehold in accordance with subsection 12.2.3 above, such Institutional Lender shall be automatically released of any further liability with respect to this Lease, other than for (i) rent payments, property tax payments, reserve account payments and other monetary obligations under specific terms of the Lease that accrue solely during such Institutional Lender's period of ownership of the leasehold, and (ii) Lessee's indemnification obligations under this Lease with respect to matters pertaining to or arising during such Institutional Lender's period of ownership of leasehold title.

12.3.2 Any other Foreclosure Transferee (i.e., other than an Institutional Lender as provided in Section 12.3.1 above) shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults).

12.3.3 Following any Foreclosure Transfer which is a transfer of the leasehold interest under the Lease, County shall recognize the Foreclosure Transferee as the Lessee under the Lease and shall not disturb its use and enjoyment of the Premises, and the Foreclosure Transferee shall succeed to all rights of Lessee under this Lease as a direct lease between County and such Foreclosure Transferee, provided that the Foreclosure Transferee cures any pre-existing Event of Default other than any such pre-existing Event of Default that (i) is a pre-existing incurable non-monetary default, or (ii) is a non-monetary default that can only be cured by a prior lessee (collectively, "**Excluded Defaults**"), and thereafter performs the full obligations of Lessee under this Lease. Pursuant to Section 12.3.7 below, following any Foreclosure Transfer which is a transfer of Ownership Interests, the foregoing rights under this Section 12.3.3 shall also inure to the benefit of the Lessee.

12.3.4 No Encumbrance Holder shall become liable to County for any of Lessee's obligations under this Lease unless and until such Encumbrance Holder becomes a Foreclosure Transferee with respect to Lessee's leasehold interest under the Lease.

12.3.5 No Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall trigger (i) any obligation to pay an Administrative Charge nor any Net Proceeds Share, (ii) any acceleration of the Extension Fee or any other financial obligation of Lessee under this Lease, (iii) any recapture right on the part of County, or (iv) any termination right under this Lease. Any Foreclosure Transfer, and any single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall be deemed to be excluded from the definitions of "Change of Ownership" for all purposes of this Lease. For clarification purposes, the "single subsequent transfer" referred to above applies to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder (as more fully explained in Section 12.2.3), so that there may be more than one "single subsequent transfer" benefited by this Section.

12.3.6 Following a Foreclosure Transfer with respect to all of the Ownership Interests in Lessee, (i) any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease, and (ii) if the Foreclosure Transferee was also an Equity Encumbrance Holder, then any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees who are Encumbrance Holders in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease.

12.4 No Subordination. County's rights in the Premises and this Lease, including without limitation County's right to receive Annual Minimum Rent and Percentage Rent, shall not be subordinated to the rights of any Encumbrance Holder. Notwithstanding the foregoing, an Encumbrance Holder shall have all of the rights set forth in the security instrument creating the Encumbrance, as approved by County in accordance with subsection 12.1.2, to the extent that such rights are not inconsistent with the terms of this Lease, including the right to commence an action against Lessee for the appointment of a receiver and to obtain possession of the Premises under and in accordance with the terms of said Encumbrance, provided that all obligations of Lessee hereunder shall be kept current, including but not limited to the payment of rent and curing of all defaults or Events of Default hereunder (other than Excluded Defaults or as otherwise provided herein).

12.5 Modification or Termination of Lease. This Lease shall not be modified or amended without the prior written consent in its sole discretion of each then existing Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease. Further, this Lease may not be surrendered or terminated (other than in accordance with the provisions of this Article 12) without the prior written consent of each such Encumbrance Holder in its sole discretion. No such modification, amendment, surrender or termination without the prior written consent of each such then existing Encumbrance Holder shall be binding on any such Encumbrance Holder or any other person who acquires title to its foreclosed interest pursuant to a Foreclosure Transfer.

12.6 Notice and Cure Rights of Encumbrance Holders and Major Sublessees.

12.6.1 Right to Cure. Each Encumbrance Holder and Major Sublessee shall have the right, at any time during the term of its Encumbrance or Major Sublease, as applicable, and in accordance with the provisions of this Article 12, to do any act or thing required of Lessee in order to prevent termination of Lessee's rights hereunder, and all such acts or things so done hereunder shall be treated by County the same as if performed by Lessee.

12.6.2 Notice of Default. County shall not exercise any remedy available to it upon the occurrence of an Event of Default (other than exercising County's self-help remedies pursuant to Section 13.5 or imposing the daily payment set forth in Section 10.2 in the case of emergency situations), and no such exercise shall be effective, unless it first shall have given written notice of such default to each and every then existing Major Sublessee and Encumbrance Holder which has notified Director in writing of its interest in the Premises or this Lease and the addresses to which such notice should be delivered. Such notice shall be sent simultaneously with the notice or notices to Lessee. An Encumbrance Holder or Major Sublessee shall have the right and the power to cure the Event of Default specified in such notice in the manner prescribed herein. If such Event or Events of Default are so cured, this Lease shall remain in full force and effect. Notwithstanding any contrary provision hereof, the Lender's cure rights set forth in this Section 12.6 shall not delay or toll the County's right to impose the daily payment for Lessee breaches set forth in Section 10.2.

12.6.3 Manner of Curing Default. Events of Default may be cured by an Encumbrance Holder or Major Sublessee in the following manner:

(a) If the Event of Default is in the payment of rental, taxes, insurance premiums, utility charges or any other sum of money, an Encumbrance Holder or the Major Sublessee may pay the same, together with any Late Fee or interest payable thereon, to County or other payee within thirty five (35) days after its receipt of the aforesaid notice of default. If, after such payment to County, Lessee pays the same or any part thereof to County, County shall refund said payment (or portion thereof) to such Encumbrance Holder or Major Sublessee.

(b) If the Event of Default cannot be cured by the payment of money, but is otherwise curable, the default may be cured by an Encumbrance Holder or Major Sublessee as follows:

(1) The Encumbrance Holder or Major Sublessee may cure the default within sixty (60) days after the end of Lessee's cure period as provided in Section 13.1 hereof (or, if the default involves health, safety or sanitation issues, County may by written notice reduce such sixty (60) day period to thirty (30) days, such 60 or 30 day period, as applicable, being referred to herein as the "**initial cure period**"), provided, however, if the curing of such default reasonably requires activity over a longer period of time, the initial cure period shall be extended for such additional time as may be reasonably necessary to cure such default, so long as the Encumbrance Holder or Major Sublessee commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. In the event Lessee commences to cure the default within Lessee's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Encumbrance Holder's and Major Sublessee's initial cure period shall commence upon the later of the end of Lessee's cure period or the date upon which County notifies the Encumbrance Holder and/or Major Sublessee that Lessee has failed or ceased to cure the default with due diligence.

(2) With respect to an Encumbrance Holder, but not a Major Sublessee, if before the expiration of the initial cure period, said Encumbrance Holder notifies County of its intent to commence foreclosure of its interest, and within sixty (60) days after the mailing of said notice, said Encumbrance Holder (i) actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, the initial cure period shall be extended by the time necessary to complete such foreclosure proceedings, or (ii) if said Encumbrance Holder is prevented from commencing or continuing foreclosure proceedings by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such stay, order, judgment or decree, the initial cure period shall be extended by the time necessary to obtain such release or reversal and thereafter to complete such foreclosure proceedings. Within thirty (30) days after a Foreclosure Transfer is completed, the Foreclosure Transferee shall (if such default has not been cured) commence to cure, remedy or correct the default and thereafter diligently pursue such



cure until completed in the same manner as provided in subsection (a) above. The Encumbrance Holder shall have the right to terminate its foreclosure proceeding, and the extension of any relevant cure period shall lapse, in the event of a cure by Lessee.

## 12.7 New Lease.

12.7.1 Obligation to Enter Into New Lease. In the event that this Lease is terminated by reasons of bankruptcy, assignment for the benefit of creditors, insolvency or any similar proceedings, operation of law, or an Excluded Default, County shall, upon the written request of any Encumbrance Holder with respect to Lessee's entire leasehold estate under this Lease or all of the Ownership Interests in Lessee (according to the priority described below if there are multiple Encumbrance Holders), enter into a new lease (which shall be effective as of the date of termination of this Lease) with the Encumbrance Holder or an affiliate thereof for the then remaining Term of this Lease on the same terms and conditions as shall then be contained in this Lease, provided that the Encumbrance Holder cures all then existing monetary defaults under this Lease, and agrees to commence a cure of all then existing non-monetary Events of Default within thirty (30) days after the new lease is entered into, and thereafter diligently pursues such cure until completion. In no event, however, shall the Encumbrance Holder be obligated to cure any Excluded Defaults. County shall notify all of the Encumbrance Holders of a termination described in this Section 12.7 within thirty (30) days after the occurrence of such termination, which notice shall state (i) that the Lease has terminated in accordance with Section 12.7 of this Lease, and (ii) that the most junior of such Encumbrance Holders has thirty (30) days following receipt of such notice within which to exercise its right to a new lease under this Section 12.7, or else it will lose such right. An Encumbrance Holder's election shall be made by giving County written notice of such election within thirty (30) days after such Encumbrance Holder has received the above-described written notice from the County. Within a reasonable period after request therefor, County shall execute and return to the Encumbrance Holder any and all documents reasonably necessary to secure or evidence the Encumbrance Holder's interest in the new lease or the Premises. From and after the effective date of the new lease, the Encumbrance Holder (or its affiliate) shall have the same rights to a single transfer that are provided in subsection 12.2.3 above, and shall enjoy all of the other rights and protections that are provided to a Foreclosure Transferee in this Article 12. Any other subsequent transfer or assignment of such new lease shall be subject to all of the requirements of Article 11 of this Lease. If there are multiple Encumbrance Holders, this right shall inure to the most junior Encumbrance Holder in order of priority; provided, however, if such junior Encumbrance Holder shall accept the new lease, the priority of each of the more senior Encumbrance Holders shall be restored in accordance with all terms and conditions of such Encumbrances(s). If a junior Encumbrance Holder does not elect to accept the new lease within thirty (30) days of receipt of notice from County, the right to enter into a new lease shall be provided to the next most junior Encumbrance Holder, under the terms and conditions described herein, until an Encumbrance Holder either elects to accept a new lease, or no Encumbrance Holder so elects.

12.7.2 Priority of New Lease. The new lease made pursuant to this Section 12.7 shall be prior to any mortgage or other lien, charge or encumbrance on County's fee

interest in the Premises, and any future fee mortgagee or other future holder of any lien on the fee interest in the Premises is hereby given notice of the provisions hereof.

12.8 Participation in Certain Proceedings and Decisions. Any Encumbrance Holder shall have the right to intervene and become a party in any arbitration, litigation, condemnation or other proceeding affecting this Lease. Lessee's right to make any election or decision under this Lease with respect to any condemnation settlement, insurance settlement or restoration of the Premises following a casualty or condemnation shall be subject to the prior written approval of each then existing Encumbrance Holder.

12.9 Fee Mortgages and Encumbrances. Any mortgage, deed of trust or other similar encumbrance granted by County upon its fee interest in the Premises shall be subject and subordinate to all of the provisions of this Lease and to all Encumbrances.

12.10 No Merger. Without the written consent of each Encumbrance Holder, the leasehold interest created by this Lease shall not merge with the fee interest in all or any portion of the Premises, notwithstanding that the fee and leasehold interests are held at any time by the same person or entity.

12.11 Rights of Encumbrance Holders With Respect to Reversion. As used in this Section 12.11, the "**Reversion**" refers to the automatic amendment of this Lease described in Section 5.1 whereby the terms and conditions of this Lease are automatically amended and revert back to the terms and provisions of the Existing Lease, as modified by the Reversion Amendment, due to the failure of Lessee to substantially complete the Redevelopment Work on or before the Required Completion Date (as such dates may be extended as provided in Section 5.1) (the "**Reversion Condition**"). Notwithstanding anything in Section 5.1 to the contrary, so long as an Encumbrance Holder exists with respect to Lessee's entire leasehold interest in this Lease, the Reversion shall not occur unless and until (i) the County has given written notice of the occurrence of the Reversion Condition to each such Encumbrance Holder (which notice shall include the following statement in all capital and bold letters: "**YOUR FAILURE TO COMMENCE A CURE OF THE DEFAULT DESCRIBE IN THIS NOTICE WITHIN 60 DAYS OF YOUR RECEIPT OF THIS NOTICE, AND TO THEREAFTER PURSUE SUCH CURE TO COMPLETION IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION 12.6.3(b) OF THE LEASE APPLICABLE TO NONMONETARY DEFAULTS, WILL RESULT IN AN AUTOMATIC AMENDMENT AND REVERSION OF THE TERMS OF THE LEASE AS MORE PARTICULARLY DESCRIBED IN SECTION 5.1 OF THE LEASE**"), and (ii) no such Encumbrance Holder commences a cure of the default within 60 days of its receipt of such notice and thereafter pursues such cure to completion in accordance with the provisions of subsection 12.6.3(b) of the Lease applicable to nonmonetary defaults. Further, in the event that a Reversion occurs, such Reversion shall be subject to the "new lease" provisions of Section 12.7 of the Lease (and in such event the Reversion shall be deemed a "termination" of this Lease solely for purposes of Section 12.7 and the "new lease" to be entered into pursuant to Section 12.7 shall mean a new lease on the same terms as this Lease, not the Existing Lease).

13. DEFAULT.

13.1 Events of Default. The following are deemed to be "Events of Default" hereunder:

13.1.1 Monetary Defaults. The failure of Lessee to pay the rentals due, or make any other monetary payments required under this Lease (including, without limitation, deposits to the Subsequent Renovations Fund), within five (5) days after written notice that said payments are overdue. Lessee may cure such nonpayment by paying the amount overdue, with interest thereon and the applicable Late Fee, within such five (5) day period.

13.1.2 Failure to Comply with Construction Obligations. The failure of Lessee to comply with the obligations and timeframes set forth in Article 5 of this Lease if not cured within ten (10) days after written notice of such failure, if no other notice of such failure is otherwise required hereunder.

13.1.3 Maintenance of Security Deposit. The failure of Lessee to maintain and/or replenish the Security Deposit required pursuant to Article 8 of this Lease if not cured within five (5) days after written notice of such failure.

13.1.4 Failure to Perform Other Obligations. The failure of Lessee to keep, perform, and observe any and all other promises, covenants, conditions and agreements set forth in this Lease, including without limitation the obligation to maintain adequate accounting and financial records, within thirty five (35) days after written notice of Lessee's failure to perform from Director; provided, however, that where Lessee's performance of such covenant, condition or agreement is not reasonably susceptible of completion within such thirty five (35) day period and Lessee has in good faith commenced and is continuing to perform the acts necessary to perform such covenant, condition or agreement within such thirty five (35) day period, County will not exercise any remedy available to it hereunder for so long as Lessee uses reasonable due diligence in continuing to pursue to completion the performance such covenant, condition or agreement and so completes performance within a reasonable time.

13.1.5 Nonuse of Premises. The abandonment, vacation, or discontinuance of use of the Premises, or any substantial portion thereof, for a period of thirty five (35) days, except when prevented by Force Majeure or when closed for renovations or repairs required or permitted to be made under this Lease. Notwithstanding the foregoing, if a the default described in the immediately preceding sentence is cause by the discontinuance by a Sublessee of the use of a portion of the Premises, then as long as Lessee diligently enforces its right under the Sublease and uses its best efforts to cause the recommencement of business in the applicable portion of the Premises as soon as possible, then the thirty five (35) day period described in the first sentence of this subsection 13.1.5 shall be increased to ninety (90) days.

Any notice required to be given by County pursuant to subsections 13.1.1 through and including 13.1.4 shall be in addition to, and not in lieu of, any notice required under Section 1161 of the California Code of Civil Procedure.

13.2 Limitation on Events of Default. Lessee shall not be considered in default as to any provision of this Lease when such default is the result of or pursuant to, any process, order, or decree of any court or regulatory body of competent jurisdiction, or any other circumstances which are physically impossible to cure provided Lessee uses due diligence in pursuing whatever is required to obtain release from or reversal of such process, order, or decree or is attempting to remedy such other circumstances preventing its performance.

13.3 Remedies. Upon the occurrence of an Event of Default, and subject to the rights of any Encumbrance Holder or Major Sublessee to cure such Event of Default as provided in Section 12.6 hereof, County shall have, in addition to any other remedies in law or equity, the following remedies which are cumulative:

13.3.1 Terminate Lease. County may terminate this Lease by giving Lessee written notice of termination. On the giving of the notice, all Lessee's rights in the Premises and in all Improvements shall terminate. Promptly after notice of termination, Lessee shall surrender and vacate the Premises and all Improvements in broom-clean condition, and County may re-enter and take possession of the Premises and all remaining Improvements and, except as otherwise specifically provided in this Lease, eject all parties in possession or eject some and not others, or eject none. Termination under this subsection shall not relieve Lessee from the payment of any sum then due to County or from any claim for damages against Lessee as set forth in subsection 13.4.3, or from Lessee's obligation to remove Improvements at County's election in accordance with Article 2. County agrees to use reasonable efforts to mitigate damages.

13.3.2 Keep Lease in Effect. Without terminating this Lease, so long as County does not deprive Lessee of legal possession of the Premises and allows Lessee to assign or sublet subject only to County's rights set forth herein, County may continue this Lease in effect and bring suit from time to time for rent and other sums due, and for Lessee's breach of other covenants and agreements herein. No act by or on behalf of County under this provision shall constitute a termination of this Lease unless County gives Lessee written notice of termination. It is the intention of the parties to incorporate the provisions of California Civil Code Section 1951.4 by means of this provision.

13.3.3 Termination Following Continuance. Even though it may have kept this Lease in effect pursuant to subsection 13.3.2, thereafter County may elect to terminate this Lease and all of Lessee's rights in or to the Premises unless prior to such termination Lessee shall have cured the Event of Default or shall have satisfied the provisions of Section 13.2, hereof. County agrees to use reasonable efforts to mitigate damages.

13.4 Damages. Should County elect to terminate this Lease under the provisions of the foregoing Section, County shall be entitled to recover from Lessee as damages:

13.4.1 Unpaid Rent. The worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Lease;

13.4.2 Post-Termination Rent. The worth, at the time of the award, of the unpaid rent that would have been earned under this Lease after the date of termination of this Lease until the date Lessee surrenders possession of the Premises to County; and

13.4.3 Other Amounts. The amounts necessary to compensate County for the sums and other obligations which under the terms of this Lease become due prior to, upon or as a result of the expiration of the Term or sooner termination of this Lease, including without limitation, those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, the cost of removal of rubble, debris and other above-ground Improvements, attorney's fees, court costs, and unpaid Administrative Charges, Net Proceeds Shares and Net Refinancing Proceeds.

13.5 Others' Right to Cure Lessee's Default. County (and any Encumbrance Holder or Major Sublessee, as provided in the last sentence of this section), at any time after Lessee's failure to perform any covenant, condition or agreement contained herein beyond any applicable notice and cure period, may cure such failure at Lessee's cost and expense. If, after delivering to Lessee two (2) or more written notices within a ten (10) year with respect to any such default, County at any time during such ten (10) year period, by reason of Lessee's continuing failure, pays or expends any sum, Lessee shall immediately pay to County the lesser of the following amounts: (1) twice the amount expended by County to cure such default and (2) the amount expended by County to cure such default, plus one thousand dollars (\$1,000). To the extent practicable, County shall give any Encumbrance Holders or Major Sublessees the reasonable opportunity to cure Lessee's default prior to County's expenditure of any amounts thereon.

13.6 Default by County. County shall be in default in the performance of any obligation required to be performed by County under this Lease if County has failed to perform such obligation within thirty (30) days after the receipt of notice from Lessee specifying in detail County's failure to perform; provided, however, that if the nature of County's obligation is such that more than thirty (30) days are required for its performance, County shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Lessee shall have no rights as a result of any default by County until Lessee gives thirty (30) days notice to any person having a recorded interest pertaining to County's interest in this Lease or the Premises. Such person shall then have the right to cure such default, and County shall not be deemed in default if such person cures such default within thirty (30) days after receipt of notice of the default, or such longer time as may be reasonably necessary to cure the default. Notwithstanding anything to the contrary in this Lease, County's liability to Lessee for damages arising out of or in connection with County's breach of any provision or provisions of this Lease shall not exceed the value of County's equity interest in the Premises and its right to insurance proceeds in connection with the policies required under Article 9 hereof.

#### 14. ACCOUNTING.

14.1 Maintenance of Records and Accounting Method. In order to determine the amount of and provide for the payment of the Annual Minimum Rent, Percentage Rent, Administrative Charge, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease, Lessee and all Sublessees shall at all times during the Term of this Lease, and for thirty six (36) months thereafter, keep, or cause to be kept, locally, to the reasonable satisfaction of Director, true, accurate, and complete records and double-entry books of account for the current and five (5) prior Accounting Years, such records to show all transactions relative to the conduct of operations, and to be supported by data of original entry. Such records shall detail transactions conducted on or from the Premises separate and apart from those in connection with Lessee's (or sublessee's or licensee's, as appropriate) other business operations, if any. Lessee shall utilize the accrual method of accounting with respect to its preparation of the reports and maintenance of records required herein.

14.2 Cash Registers. To the extent retail sales are conducted on the Premises, or other cash or credit sales of goods or services are conducted, all such sales shall be recorded by means of cash registers or computers which automatically issue a customer's receipt or certify the amount recorded in a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape (or other equivalent security mechanism) located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record.

Lessee shall cause to be implemented point of sale systems which can accurately verify all sales for audit purposes and customer review purposes, which system shall be submitted to the Director in advance of installation for his approval, which approval or disapproval shall be given within a reasonable time, and shall not be unreasonably withheld.

Lessee's obligations set forth in this Section 14.2 include Lessee's obligation to insure that Lessee's Sublessees, licensees, permittees, concessionaires and any other occupants of any portion of the Premises keep records sufficient to permit County and County's auditors to determine the proper levels of Annual Minimum Rent, Percentage Rent, Administrative Charge, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease.

14.3 Statement; Payment. No later than the fifteenth (15th) day of each calendar month, Lessee shall render to County a detailed statement showing Gross Receipts during the preceding calendar month, together with its calculation of the amount payable to County under Sections 4.2 through 4.8 inclusive, and shall accompany same with remittance of amount so shown to be due.

14.4 Availability of Records for Inspector's Audit. Books of account and records hereinabove required shall be kept or made available at the Premises or at another location within Los Angeles County, and County and other governmental authorities shall have the right at any reasonable times to examine and audit said books and records, without restriction, for the purpose of determining the accuracy thereof and of the monthly statements of Gross Receipts derived from occupancy of the Premises and the compliance of Lessee with the terms of this Lease and other governmental requirements. This Section 14.4 shall survive the expiration of the

Term or other termination of this Lease for thirty six (36) months after such expiration or termination.

14.4.1 Entry by County. County and its duly authorized representatives or agents may enter upon the Premises at any and all reasonable times and normal business hours during the Term of this Lease for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of County.

14.5 Cost of Audit. In the event that, for any reason, Lessee does not make available its (or its Sublessee's or licensee's) original records and books of account at the Premises or at a location within Los Angeles County, Lessee agrees to pay all expenses incurred by County in conducting any audit at the location where said records and books of account are maintained. In the event that any audit discloses a discrepancy in County's favor of greater than two percent (2%) of the revenue due County for the period audited, then Lessee shall pay County audit contract costs, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Section 4.5.

14.6 Accounting Year. The term "Accounting Year" as used herein shall mean each calendar year during the Term.

14.7 Annual Financial Statements. Within six (6) months after the end of each Accounting Year, or at Lessee's election, after the completion of Lessee's fiscal year, Lessee shall furnish for each such year hereunder certified statements of Gross Receipts and Gross Rent Revenue (including a breakdown by percentage rent category) and Permitted Capital Expenditures, if applicable hereunder, prepared by a Certified Public Accountant who is a member of the America Institute of Certified Public Accountants and is satisfactory to County. All financial statements prepared by or on behalf of Lessee shall be prepared in a manner that permits County to determine the financial results of operations in connection with Lessee's activities at, from or relating to the Premises, notwithstanding that Lessee may have income and expenses from other activities unrelated to its activities on the Premises.

14.8 Accounting Obligations of Sublessees. Lessee shall cause all Sublessees, licensees, concessionaires and others conducting business operations on or from the Premises to comply with all terms of this Article 14 with respect to the maintenance, form, availability and methodology of accounting records, to the extent that the Gross Receipts of such Sublessees, licensees and concessionaires are relevant to the calculation of Percentage Rent under this Lease.

14.9 Inadequacy of Records. In the event that Lessee or its Sublessees, licensees or concessionaires, as appropriate, fails to maintain the records required by this Article 14 such that a Certified Public Accountant is unable to issue an opinion as to Gross Receipts without a qualification regarding the failure of such records to be maintained, such failure to maintain the records required hereunder shall be deemed a breach of this Lease by Lessee. In addition to the other remedies available to County at law or equity as a result of such breach (subject to the limitations of this Section 14.9 pertaining to a Sublessee Breach, as defined below), County may prepare a calculation of the Percentage Rent payable by Lessee during the period in which the accounting records were inadequately maintained. Such calculation may be based on the past

Gross Receipts levels on or from the Premises, the past or present level of Gross Receipts experienced by tenants of comparable leaseholds in Marina del Rey with comparable business operations, or any other commercially reasonable method as determined by Director. Within five (5) business days after receipt of County's determination of Percentage Rent due, if any, Lessee shall pay such Percentage Rent, together with a late fee of six percent (6%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with County's Actual Cost in connection with the attempted audit of the inadequate records and the reconstruction and estimation of Gross Receipts and the calculation of Percentage Rent due. Lessee may cure the failure of any Sublessees, licensees or concessionaires to keep the records required by this Article 14 (a "Sublessee Breach") by paying to County the amount of County's estimate of Percentage Rent due as determined above, together with a late fee of six percent (6%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with County's Actual Cost in connection with the attempted audit of the inadequate records and the reconstruction and estimation of Gross Receipts and the calculation of Percentage Rent due, within five (5) days after receipt of County's determination of such Percentage Rent due. As long as Lessee cures a Sublessee Breach as provided above, such cure shall be County's sole remedy for the Sublessee Breach.

15. MISCELLANEOUS.

15.1 Quiet Enjoyment. Lessee, upon performing its obligations hereunder, shall have the quiet and undisturbed possession of the Premises throughout the Term of this Lease, subject, however, to the terms and conditions of this Lease.

15.2 Time is of the Essence. Except as specifically otherwise provided for in this Lease, time is of the essence of this Lease and applies to all times, restrictions, conditions, and limitations contained herein.

15.3 County Costs. Lessee shall promptly reimburse County for the Actual Costs incurred by County in the review, negotiation, preparation and documentation of this Lease and the term sheets and memoranda that preceded it. The parties acknowledge that Lessee has deposited the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) toward those costs. County shall deliver to Lessee a report detailing such expenditures within ninety (90) days after the Effective Date.

15.4 County Disclosure and Lessee's Waiver.

15.4.1 Disclosures and Waiver.

15.4.1.1 "AS IS". Lessee acknowledges that it is currently in possession of the Premises and that Lessee or its predecessor-in-interest has continuously occupied and/or managed and operated the Premises since 1964. Lessee accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease, at the time of the execution of this Lease by Lessee and Lessee hereby represents that it has performed all investigations necessary, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS".



15.4.1.2 Lessee acknowledges that it may incur additional engineering and construction costs above and beyond those contemplated by either party to this Lease at the time of the execution hereof and Lessee agrees that, it will make no demands upon County for any construction, alterations, or any kind of labor that may be necessitated in connection therewith.

15.4.1.3 Lessee hereby waives, withdraws, releases, and relinquishes any and all claims, suits, causes of action (other than a right to terminate as otherwise provided in this Lease), rights of rescission, or charges against County, its officers, agents, employees or volunteers which Lessee now has or may have or asserts in the future which are based upon any defects in the physical condition of the Premises and the soil thereon and thereunder, regardless of whether or not said conditions were known at the time of the execution of this instrument.

15.4.1.4 California Civil Code Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
WHICH THE CREDITOR DOES NOT KNOW OR  
SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF  
EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM  
MUST HAVE MATERIALLY AFFECTED HIS  
SETTLEMENT WITH THE DEBTOR.

By initialing this paragraph, Lessee acknowledges that it has read, is familiar with, and waives the provisions of California Civil Code §1542 set forth above, and agrees to all of the provisions of subsection 15.4.1.3 above.

\_\_\_\_\_  
Lessee's Initials

15.4.2 Right of Offset. Lessee acknowledges that the rent provided for in this Lease has been agreed upon in light of Lessee's construction, maintenance and repair obligations set forth herein, and, notwithstanding anything to the contrary provided in this Lease or by applicable law, Lessee hereby waives any and all rights, if any, to make repairs at the expense of County and to deduct or offset the cost thereof from the Annual Minimum Rent, Monthly Minimum Rent, Percentage Rent or any other sums due County hereunder.

15.5 Holding Over. If Lessee holds over after the expiration of the Term for any cause, with or without the express or implied consent of County, such holding over shall be deemed to be a tenancy from month-to-month only, and shall not constitute a renewal or extension of the Term. During any such holdover period, the Minimum Monthly Rent and Percentage Rent rates in effect at the end of the Term shall be increased to one hundred fifty percent (150%) of such previously effective amounts. Such holdover shall otherwise be subject to the same terms, conditions, restrictions and provisions as herein contained. Such holding over shall include any time employed by Lessee to remove machines, appliances and other equipment during the time periods herein provided for such removal.

Nothing contained herein shall be construed as consent by County to any holding over by Lessee, and County expressly reserves the right to require Lessee to surrender possession of the Premises to County as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Section 15.5 shall not be deemed to limit or constitute a waiver of any other rights or remedies of County provided at law or in equity. If Lessee fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to County accruing therefrom, Lessee shall protect, defend, indemnify and hold County harmless from all losses, costs (including reasonable attorneys' fees), damages, claims and liabilities resulting from such failure, including, without limitation, any claims made by any succeeding tenant arising from such failure to surrender, and any lost profits to County resulting therefrom.

15.6 Waiver of Conditions or Covenants. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms, and agreements of this Lease shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term, or agreement of this Lease, nor shall failure on the part of either party to require exact full and complete compliance with any of the covenants, conditions, terms, or agreements of this Lease be construed as in any manner changing the terms hereof or estopping that party from enforcing the full provisions hereof, nor shall the terms of this Lease be changed or altered in any manner whatsoever other than by written agreement of County and Lessee. No delay, failure, or omission of County to re-enter the Premises or of either party to exercise any right, power, privilege, or option, arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right. No notice to Lessee shall be required to restore or revive "time of the essence" after the waiver by County of any default. Except as specifically provided in this Lease, no option, right, power, remedy, or privilege of either party shall be construed as being exhausted by the exercise thereof in one or more instances.

15.7 Remedies Cumulative. The rights, powers, options, and remedies given County by this agreement shall be cumulative except as otherwise specifically provided for in this Lease.

15.8 Authorized Right of Entry. In any and all cases in which provision is made herein for termination of this Lease, or for exercise by County of right of entry or re-entry upon the Premises, or in case of abandonment or vacation of the Premises by Lessee, Lessee hereby irrevocably authorizes County to enter upon the Premises and remove any and all persons and property whatsoever situated upon the Premises and place all or any portion of said property, except such property as may be forfeited to County, in storage for the account of and at the expense of Lessee.

Lessee agrees to indemnify, defend and save harmless County from any cost, expense, loss or damage arising out of or caused by any such entry or re-entry upon the Premises under this Section 15.8, and the removal of persons and property and storage of such property by County and its agents, except to the extent caused by the gross negligence or willful misconduct of County, its agents or employees.

15.9 Place of Payment and Filing. All rentals shall be paid to and all statements and reports herein required and other items deliverable to County hereunder shall be filed with or delivered to the Department. Checks, drafts, letters of credit and money orders shall be made payable to the County of Los Angeles.

15.10 Service of Written Notice or Process. Any notice required to be sent under this Lease shall be in compliance with and subject to this Section 15.10. If Lessee is not a resident of the State of California, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, Lessee shall file with Director a designation of a natural person residing in the County of Los Angeles, State of California, or a service company, such as CT Corporation, which is authorized to accept service, giving his or its name, residence, and business address, as the agent of Lessee for the service of process in any court action between Lessee and County, arising out of or based upon this Lease, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Lessee.

If for any reason service of such process upon such agent is not possible, then any officer of Lessee may be personally served with such process outside of the State of California and such service shall constitute valid service upon Lessee; and it is further expressly agreed that Lessee is amenable to such process and submits to the jurisdiction of the court so acquired and waives any and all objection and protest thereto.

Written notice addressed to Lessee at the addresses below-described, or to such other address that Lessee may in writing file with Director, shall be deemed sufficient if said notice is delivered personally, by telecopy or facsimile transmission or, provided in all cases there is a return receipt requested and postage or other delivery charges prepaid, by registered or certified mail posted in the County of Los Angeles, California, Federal Express or DHL, or such other services as Lessee and County may mutually agree upon from time to time. Each notice shall be deemed received and the time period for which a response to any such notice must be given or any action taken with respect thereto (including cure of any prospective Event of Default) shall commence to run from the date of actual receipt of the notice by the addressee thereof in the case of personal delivery, telecopy or facsimile transmission if before 5:00 p.m. on regular business days, or upon the expiration of the third (3rd) business day after such notice is sent from within Los Angeles County in the case of such registered or certified mail as authorized in this Section.

Copies of any written notice to Lessee shall also be simultaneously mailed to any Encumbrance Holder, Major Sublessee or encumbrancer of such Major Sublessee of which County has been given written notice and an address for service. Notice given to Lessee as provided for herein shall be effective as to Lessee notwithstanding the failure to send a copy to such Encumbrance Holder, Major Sublessee or encumbrancer.

As of the date of execution hereof, the persons authorized to receive notice on behalf of County and Lessee are as follows:

COUNTY: Director  
Department of Beaches and Harbors  
Los Angeles County  
13837 Fiji Way  
Marina del Rey, California 90292  
Phone: 310/305-9522  
Fax: 310/821-6345

With a Copy to: Office of County Counsel  
Los Angeles County  
500 West Temple Street  
Los Angeles, California 90012  
Attn: County Counsel  
Phone: 213/974-1801  
Fax: 213/617-7182

LESSEE: Marina Waterside, LLC  
101 The Grove Drive  
Los Angeles, California 90036  
Attn: Rick J. Caruso and Rick Moses  
Phone: 323/900-8100  
Fax: 323/900-8101

With a Copy to: Jeffrey E. Donfeld, Esq.  
Donfeld, Kelley & Rollman  
11845 W. Olympic Boulevard, Suite 1245  
Los Angeles, California 90064  
Phone: 310/312-8080  
Fax: 310/312-8014

15.11 Interest. In any situation where County has advanced sums on behalf of Lessee pursuant to this Lease, such sums shall be due and payable immediately upon demand, together with interest at the Applicable Rate (unless another rate is specifically provided herein) from the date such sums were first advanced, until the time payment is received. In the event that Lessee repays sums advanced by County on Lessee's behalf with interest in excess of the maximum rate permitted by Applicable Laws, County shall either refund such excess payment or credit it against subsequent installments of Annual Minimum Rent and Percentage Rent.

15.12 Captions. The captions contained in this Lease are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Lease.

15.13 Attorneys' Fees. In the event of any action, proceeding or arbitration arising out of or in connection with this Lease, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation attorneys' fees for County Counsel's services where County is represented by the County Counsel and is the prevailing party, and also including all fees, costs and expenses incurred in executing, perfecting, enforcing and collecting any judgment.

15.14 Amendments. This Lease may only be amended in writing executed by duly authorized officials of Lessee and County. Notwithstanding the foregoing, Director shall have the power to execute such amendments to this Lease as are necessary to implement any arbitration judgment issued pursuant to this Lease.

15.15 Time For Director Approvals. Except where a different time period is specifically provided for in this Lease, whenever in this Lease the approval of Director is required, approval shall be deemed not given unless within thirty (30) days after the date of the receipt of the written request for approval from Lessee, Director either (a) approves such request in writing, or (b) notifies Lessee that it is not reasonably possible to complete such review within the thirty (30)-day period, provides a final date for approval or disapproval by Director (the "Extended Time") and approves such request in writing prior to such Extended Time. If Director does not approve such request in writing within such Extended Time, the request shall be deemed to be disapproved.

15.16 Time For County Action. Notwithstanding anything to the contrary contained in this Lease, wherever Director determines that a County action required hereunder necessitates approval from or a vote of one or more of County's boards or commissions or County's Board of Supervisors, the time period for County performance of such action shall be extended as is necessary in order to secure such approval or vote, and County shall not be deemed to be in default hereunder in the event that it fails to perform such action within the time periods otherwise set forth herein.

15.17 Estoppel Certificates. Each party agrees to execute, within ten (10) business days after the receipt of a written request therefor from the other party, a certificate stating: that this Lease is in full force and effect and is unmodified (or stating otherwise, if true); and that, to the best knowledge of such party, the other party is not then in default under the terms of this Lease (or stating the grounds for default if such be the case). Prospective purchasers, Major Sublessees and lenders may rely on such statements.

15.18 Indemnity Obligations. Whenever in this Lease there is an obligation to indemnify, hold harmless and/or defend, irrespective of whether or not the obligation so specifies, it shall include the obligation to defend and pay reasonable attorney's fees, reasonable expert fees and court costs.

15.19 Controlled Prices. Lessee shall at all times maintain a complete list or schedule of the prices charged for all goods or services, or combinations thereof, supplied to the public on or from the Premises, whether the same are supplied by Lessee or by its Sublessees, assignees, concessionaires, permittees or licensees. Said prices shall be fair and reasonable, based upon the following two (2) considerations: first, that the property herein demised is intended to serve a public use and to provide needed facilities to the public at fair and reasonable cost; and second, that Lessee is entitled to a fair and reasonable return upon his investment pursuant to this Lease. In the event that Director notifies Lessee that any of said prices are not fair and reasonable, Lessee shall have the right to confer with Director and to justify said prices. If, after reasonable conference and consultation, Director shall determine that any of said prices are not fair and reasonable, the same shall be modified by Lessee or its Sublessees, assignees, concessionaires, permittees or licensees, as directed. Lessee may appeal the determination of Director to the

Board, whose decision shall be final and conclusive. Pending such appeal, the prices fixed by Director shall be the maximum charged by Lessee.

16. ARBITRATION.

Except as otherwise provided by this Article 16, disputed matters which may be arbitrated pursuant to this Lease shall be settled by binding arbitration in accordance with the then existing provisions of the California Arbitration Act, which as of the date hereof is contained in Title 9 of Part III of the California Code of Civil Procedure, commencing with Section 1280.

(a) Either party (the "Initiating Party") may initiate the arbitration process by sending written notice ("Request for Arbitration") to the other party (the "Responding Party") requesting initiation of the arbitration process and setting forth a brief description of the dispute or disputes to be resolved and the contention(s) of the Initiating Party. Within ten (10) days after service of the Request for Arbitration, the Responding Party shall file a "Response" setting forth the Responding Party's description of the dispute and the contention(s) of Responding Party. If Responding Party has any "Additional Disputes" he shall follow the format described for the Initiating Party. The Initiating Party will respond within ten (10) days after service of the Additional Disputes setting forth Initiating Party's description of the Additional Disputes and contentions regarding the Additional Disputes.

(b) Notwithstanding anything to the contrary which may now or hereafter be contained in the California Arbitration Act, the parties agree that the following provisions shall apply to any and all arbitration proceedings conducted pursuant to this Lease:

16.1 Selection of Arbitrator. The parties shall attempt to agree upon an arbitrator who shall decide the matter. If, for any reason, the parties are unable to agree upon the arbitrator within ten (10) days of the date the Initiating Party serves a request for arbitration on the Responding Party, then at any time on or after such date either party may petition for the appointment of the arbitrator as provided in California Code of Civil Procedure Section 1281.6.

16.2 Arbitrator. The arbitrator shall be a retired judge of the California Superior Court, Court of Appeal or Supreme Court, or any United States District Court or Court of Appeals located within the State, who has agreed to resolve civil disputes.

16.3 Scope of Arbitration. County and Lessee affirm that the mutual objective of such arbitration is to resolve the dispute as expeditiously as possible. The arbitration process shall not apply or be used to determine issues other than (i) those presented to the arbitrator by the Initiating Party provided those disputes are arbitrable disputes pursuant to this Lease, (ii) Additional Disputes presented to the arbitrator by the Responding Party, provided that any such Additional Disputes constitute arbitrable disputes pursuant to this Lease and (iii) such related preliminary or procedural issues as are necessary to resolve (i) and/or (ii) above. The arbitrator shall render an award. Either party may, at its sole cost and expense, request a statement of decision explaining the arbitrator's reasoning which shall be in such detail as the arbitrator may determine. Unless otherwise expressly agreed by the parties in writing, the award shall be made

by the arbitrator no later than the sooner of six (6) months after the date on which the arbitrator is selected by mutual agreement or court order, whichever is applicable, or five (5) months after the date of a denial of a petition to disqualify a potential arbitrator for cause. County and Lessee hereby instruct the arbitrator to take any and all actions deemed reasonably necessary, appropriate or prudent to ensure the issuance of an award within such period. Notwithstanding the foregoing, failure to complete the arbitration process within such period shall not render such arbitration or any determination made therein void or voidable; however, at any time after the expiration of the foregoing five (5) or six (6) month periods, as applicable, either party may deliver written notice to the arbitrator and the other party either terminating the arbitration or declaring such party's intent to terminate the arbitration if the award is not issued within a specified number of days after delivery of such notice. If the arbitrator's award is not issued prior to the expiration of said specified period, the arbitration shall be terminated and the parties shall recommence arbitration proceedings pursuant to this Article 16.

16.4 Immunity. The parties hereto agree that the arbitrator shall have the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator pursuant to this Lease.

16.5 Section 1282.2. The provisions of Code of Civil Procedure § 1282.2 shall apply to the arbitration proceedings except to the extent they are inconsistent with the following:

(1) Unless the parties otherwise agree, the arbitrator shall appoint a time and place for the hearing and shall cause notice thereof to be served as provided in said § 1282.2 not less than ninety (90) days before the hearing, regardless of the aggregate amount in controversy.

(2) No later than sixty (60) days prior to the date set for the hearing (unless, upon a showing of good cause by either party, the arbitrator establishes a different period), in lieu of the exchange and inspection authorized by Code of Civil Procedure § 1282.2(a)(2)(A), (B) and (C), the parties shall simultaneously exchange the following documents by personal delivery to each other and to the arbitrator:

(a) a written Statement of Position, as further defined below, setting forth in detail that party's final position regarding the matter in dispute and specific numerical proposal for resolution of monetary disputes;

(b) a list of witnesses each party intends to call at the hearing, designating which witnesses will be called as expert witnesses and a summary of each witness's testimony;

(c) a list of the documents each intends to introduce at the hearing, together with complete and correct copies of all of such documents; and,

(d) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence (as defined below) each intends to introduce at the hearing, together with complete and correct copies of all of such Written Appraisal Evidence.

(3) No later than twenty (20) days prior to the date set for the hearing, each party may file a reply to the other party's Statement of Position ("Reply"). The Reply shall contain the following information:

(a) a written statement, to be limited to that party's rebuttal to the matters set forth in the other party's Statement of Position;

(b) a list of witnesses each party intends to call at the hearing to rebut the evidence to be presented by the other party, designating which witnesses will be called as expert witnesses;

(c) a list of the documents each intends to introduce at the hearing to rebut the evidence to be presented by the other party, together with complete and correct copies of all of such documents (unless, upon a showing of good cause by either party, the arbitrator establishes a different deadline for delivering true and correct copies of such documents);

(d) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence, or written critiques of the other party's Written Appraisal Evidence if any, each intends to introduce at the hearing to rebut the evidence presented by the other party, together with complete and correct copies of all of such Written Appraisal Evidence (unless, upon a showing of good cause by either party, the arbitrator establishes a different deadline for delivering true and correct copies of such Written Appraisal Evidence); and

(e) Witnesses or documents to be used solely for impeachment of a witness need not be identified or produced.

(4) The arbitrator is not bound by the rules of evidence, but may not consider any evidence not presented at the hearing. The arbitrator may exclude evidence for any reason a court may exclude evidence or as provided in this Lease.

16.6 Statements of Position. The Statement of Position to be delivered by Section 16.5 shall comply with the following requirements:

(1) Where the dispute involves rent to be charged, market values, insurance levels or other monetary amounts, the Statements of Position shall numerically set forth the existing minimum rent, percentage rent, market value, insurance level and/or other monetary amounts in dispute, the party's proposed new minimum rent, percentage rent, market value, insurance level and/or other monetary amounts, and shall additionally set forth the facts supporting such party's position.

(2) If the dispute relates to Improvement Costs, the Statements of Position shall set forth the facts supporting such party's position and the amount of each cost which the party believes should be allowed or disallowed.



16.7 Written Appraisal Evidence. Neither party may, at any time during the proceedings, introduce any written report which expresses an opinion regarding Fair Market Rental Value or the fair market value of the Premises, or any portion thereof, ("Written Appraisal Evidence") unless such Written Appraisal Evidence substantially complies with the following standards: it shall describe the Premises; identify the uses permitted thereon; describe or take into consideration the terms, conditions and restrictions of this Lease; correlate the appraisal method(s) applied; discuss the relevant factors and data considered; review rentals paid by lessees in Marina del Rey and other marina locations within Southern California who are authorized to conduct similar activities on comparable leaseholds; and, describe the technique of analysis, limiting conditions and computations that were used in the formulation of the valuation opinion expressed. With respect to disputes regarding Fair Market Rental Value, such Written Appraisal Evidence shall express an opinion regarding the fair market rental value of the Premises as prescribed by Section 4.4.1. Written Appraisal Evidence in connection with disputes arising out of Article 6 of this Lease shall predicate any valuation conclusions contained therein on the Income Approach. Written Appraisal Evidence shall in all other respects be in material conformity and subject to the requirements of the Code of Professional Ethics and the Standards of Professional Practice of The Appraisal Institute or any successor entity.

16.8 Evidence. The provisions of Code of Civil Procedure § 1282.2(a)(2)(E) shall not apply to the arbitration proceeding. The arbitrator shall have no discretion to allow a party to introduce witnesses, documents or Written Appraisal Evidence (other than impeachment testimony) unless such information was previously delivered to the other party in accordance with Section 16.5 and, in the case of Written Appraisal Evidence, substantially complies with the requirements of Section 16.7, or such evidence consists of a transcript of a deposition of an expert witness conducted pursuant to Section 16.9. Notwithstanding the foregoing, the arbitrator may allow a party to introduce evidence which, in the exercise of reasonable diligence, could not have been delivered to the other party in accordance with Section 16.5, provided such evidence is otherwise permissible hereunder.

16.9 Discovery. The provisions of Code of Civil Procedure § 1283.05 shall not apply to the arbitration proceedings except to the extent incorporated by other sections of the California Arbitration Act which apply to the arbitration proceedings. There shall be no pre-arbitration discovery except as provided in Section 16.5; provided, however, each party shall have the right, no later than seven (7) days prior to the date first set for the hearing, to conduct a deposition, not to exceed three (3) hours in duration unless the arbitrator otherwise determines that good cause exists to justify a longer period, of any person identified by the other party as an expert witness pursuant to Sections 16.5 (2)(b) or 16.5 (3)(b).

#### 16.10 Awards of Arbitrators.

16.10.1 Monetary Issues. With respect to monetary disputes (including without limitation disputes regarding Percentage Rent, Fair Market Rental Value and the amount of coverage under the policies of insurance required pursuant to Article 9 of this Lease), the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position. The arbitrator shall instead select whichever of the two Statements of Position is the closest to the monetary or numerical amount that the arbitrator determines to be the appropriate determination of the rent,

expense, claim, cost, delay, coverage or other matter in dispute and shall render an award consistent with such Statement of Position. For purposes of this Section 16.10, each dispute regarding Annual Minimum Rent, each category of Percentage Rent and the amount of required insurance coverage shall be considered separate disputes (a "Separate Dispute"). While the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position concerning a Separate Dispute, the arbitrator shall have the right, if the arbitrator so chooses, to choose one party's Statement of Position on one or more of the Separate Disputes, while selecting the other party's Statement of Position on the remaining Separate Disputes. For example, if the parties are unable to agree on the Annual Minimum Rent and three Percentage Rent categories to be renegotiated pursuant to Section 4.4 and the amount of liability insurance coverage to be renegotiated pursuant to Section 9.3, then there shall be five Separate Disputes and the arbitrator shall be permitted to select the County's Statement of Position with respect to none, some or all of such five Separate Disputes and select the Lessee's Statement of Position, on the balance, if any, of such five Separate Disputes. Upon the arbitrator's selection of a Statement of Position, pursuant to this Article 16, the Statement of Position so chosen and the award rendered by the arbitrator thereon shall be final and binding upon the parties, absent Gross Error on the part of the arbitrator.

16.10.2 Nonmonetary Issues. With respect to nonmonetary issues and disputes, the arbitrator shall determine the most appropriate resolution of the issue or dispute, taking into account the Statements of Position submitted by the parties, and shall render an award accordingly. Such award shall be final and binding upon the parties, absent Gross Error on the part of the arbitrator.

16.11 Powers of Arbitrator. In rendering the award, the arbitrator shall have the power to consult or examine experts or authorities not disclosed by a party pursuant to Section 16.5(2) hereof, provided that each party is afforded the right to cross-examine such expert or rebut such authority.

16.12 Costs of Arbitration. Lessee and County shall equally share the expenses and fees of the arbitrator, together with other expenses of arbitration incurred or approved by the arbitrator. Failure of either party to pay its share of expenses and fees constitutes a material breach of such party's obligations hereunder.

16.13 Amendment to Implement Judgment. Within seven (7) days after the issuance of any award by the arbitrator becomes final, the County will draft a proposed amendment to the Lease setting forth the relevant terms of such award. As long as the amendment accurately sets forth the relevant terms of the award and does not otherwise modify this Lease, Lessee will sign the amendment and return the executed copy to the County within seven (7) days after delivery of a copy of the amendment to Lessee. County shall thereafter execute the amendment as soon as reasonably practicable.

16.14 Impact of Gross Error Allegations. Where either party has charged the arbitrator with Gross Error:

16.14.1 The award shall not be implemented if the party alleging Gross Error obtains a judgment of a court of competent jurisdiction stating that the arbitrator was guilty of Gross Error and vacating the arbitration award ("Disqualification Judgment"). In the event of a Disqualification Judgment, the arbitration process shall begin over immediately in accordance with this Section 16.14, which arbitration shall be conducted (with a different arbitrator) as expeditiously as reasonably possible.

16.14.2 The party alleging Gross Error shall have the burden of proof.

16.14.3 For the purposes of this Section 16.14, the term "Gross Error" shall mean that the arbitration award is subject to vacation pursuant to California Code of Civil Procedure § 1286.2 or any successor provision.

16.15 Notice.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION TO NEUTRAL ARBITRATION.

\_\_\_\_\_  
Initials of Lessee

\_\_\_\_\_  
Initials of County

17. DEFINITION OF TERMS; INTERPRETATION.

17.1 Meanings of Words Not Specifically Defined. Words and phrases contained herein shall be construed according to the context and the approved usage of the English language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning by law, or are defined in Section 1.1, are to be construed according to such technical, peculiar, and appropriate meaning or definition.

17.2 Tense; Gender; Number; Person. Words used in this Lease in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter and the neuter includes the masculine and feminine; the singular number includes the plural and the plural the singular; the word "person" includes a corporation, partnership, limited liability company or similar entity, as well as a natural person.

17.3 Business Days. For the purposes of this Lease, "business day" shall mean a business day as set forth in Section 9 of the California Civil Code.

17.4 Parties Represented by Consultants, Counsel. Both County and Lessee have entered this Lease following advice from independent financial consultants and legal counsel of their own choosing. This document is the result of combined efforts of both parties and their consultants and attorneys. Thus, any rule of law or construction which provides that ambiguity in a term or provision shall be construed against the draftsman shall not apply to this Lease.

17.5 Governing Law. This Lease shall be governed by and interpreted in accordance with the laws of the State of California.

17.6 Reasonableness Standard. Except where a different standard is specifically provided otherwise herein, whenever the consent of County or Lessee is required under this Lease, such consent shall not be unreasonably withheld and whenever this Lease grants County or Lessee the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations, County and Lessee shall act reasonably and in good faith. These provisions shall only apply to County acting in its proprietary capacity.

17.7 Compliance with Code. County and Lessee agree and acknowledge that this Lease satisfies the requirements of Section 25536 of the California Government Code as a result of various provisions contained herein.

17.8 Memorandum of Lease. The parties hereto shall execute and acknowledge a Memorandum of Lease Extension, in recordable form and otherwise satisfactory to the parties hereto, for recording as soon as is practicable on or following the Effective Date.

IN WITNESS WHEREOF, County and Lessee have entered into this Lease as of the Effective Date.

APPROVED AS TO FORM:

LLOYD W. PELLMAN  
COUNTY COUNSEL

By: \_\_\_\_\_  
Deputy

THE COUNTY OF LOS ANGELES

By: \_\_\_\_\_  
Mayor, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS,  
Executive Officer of the  
Board of Supervisors

By: \_\_\_\_\_  
Deputy

MARINA WATERSIDE, LLC,  
a California Limited Liability Company

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

MUNGER, TOLLES & OLSON LLP

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PREMISES**

[To be added]

**EXHIBIT B**  
**RENOVATION PLAN**

**MARINA WATERSIDE CENTER  
SUMMARY OF TERMS FOR LEASE EXTENSION OPTION  
PARCEL 50T – MARINA DEL REY**

**September 16, 2003**

**LESSEE TO BE CARUSO AFFILIATED HOLDINGS**

| BOARD POLICY ITEM | TERMS  |
|-------------------|--|
| 1. REDEVELOPMENT  | <p>Development Plan to be approved by County and attached as <b>Exhibit A</b>. Such development to include remodeling of the Ralphs market to operate as a Ralphs FreshFare or highest quality equivalent store concept within Ralphs corporate store criteria including, upon satisfaction of Ralphs conditions, an approximate 9,500 sq. ft. premises expansion; demolition and replacement of building facades so as to provide a varied profile plan (pushing in and pulling out store fronts); installation of second story balconies, awnings and windows as well as varying the roofline and roofing materials; construction of a new clock tower; installation of varying façade finishes with plaster, brick and stone veneers; installation of replacement sidewalks along building facades with colored and seeded aggregate concrete; demolition and installation of new planter pockets at each column with climbing plants and irrigation, replacement of perimeter landscaping and removal and replacement of plant materials and lighting at each parking island planter; construction of a new landscaped plaza with fountain; screening with landscaping, trellis structures etc. of Lincoln Blvd. frontage and corners, seal/restriping of parking lot surface and replacement of existing parking lot lighting fixtures; and installation of new monument signage. Construction to be completed within 2 years of lessee's exercise of lease extension option, subject to Force Majeure (<b>Exhibit B</b>) which in no event shall exceed 2 years.</p> <p>- Total development cost to be not less than \$8,865,000 plus additional amounts of up to \$2 million to be expended by Ralphs in the event of satisfaction of Ralphs conditions to allow approximate 9,500 square foot store expansion; all improvements to be of at least comparable quality to first class shopping centers in West Los Angeles and the Courtyard at Calabasas and Encino/Hayvenhurst projects.</p> |



| BOARD POLICY ITEM | TERMS  |
|-------------------|--|
| 2. EXTENSION TERM | <p>- Option to extend lease by 39 years, from February 1, 2024 to January 31, 2063, is exercisable by lessee within 6 months of grant of option by Board of Supervisors. Grant of option to be provided by Board of Supervisors only after lessee has paid an option fee of \$100,000. Lessee can exercise option only after it has obtained all required planning, zoning and entitlement approvals, including Design Control Board, Regional Planning, Board of Supervisors (if applicable) and Coastal Commission (if applicable), and has provided to County satisfactory evidence of project financing. If lessee is unable to obtain all of the necessary entitlement approvals within the 6-month period, the Director shall grant one 6-month extension if lessee can demonstrate it has diligently pursued those approvals. If lessee obtains its entitlement approvals within the 6-month (or 12-month) period, but such approvals are subject to litigation or appeal brought by a third party, then the option exercise date will be tolled pending the resolution of such litigation or appeal; provided, however, that the option exercise date shall in no event be later than 4 years after the date of the grant of option.</p> <p>- If Caruso Affiliated Holdings acquires the present leasehold, but does not exercise the Option, all items in this Term Sheet shall lapse with the exception of items 4, 6, 9, 10, 11 and 12, all of which shall be incorporated by amendment of the current lease.</p> |

| BOARD POLICY ITEM    | TERMS  |
|----------------------|--|
| 3. EXTENSION FEE     | <p>- The amount of the extension fee shall be \$500,000, (subject to appraisal verification) payable as set forth below. Lessee shall pay a non-refundable option fee of \$100,000 concurrent with the execution of the option agreement. Such payment shall be credited against extension fee if the option is exercised, but shall not be refundable in the event option is not exercised.</p> <p>- The remaining \$400,000 of the extension fee shall be payable in seven (7) installments of principal plus interest, beginning at the commencement of the fourth extended lease year. Interest shall be charged on the unpaid portion of the extension fee at the 10-year Treasury Bond rate, adjusted quarterly.</p>   |
| 4. MARKET RATE RENTS | <p>- Minimum annual rent during the first five lease years shall be \$750,000.</p> <p>- Minimum annual rent for the sixth lease year shall be equal to 75% of the average total annual rent paid to the County for the preceding 3 years and shall be reset in the 9<sup>th</sup> lease year and every 3<sup>rd</sup> year thereafter to an amount equal to 75% of the previous 3 years' average total annual rent paid, subject to renegotiation to Fair Market Value 20 years after exercise of the Option and every 10 years thereafter.</p> <p>- Percentage rents at:   3.5% of restaurant gross revenues<br/>                                         16% of all other subtenant gross rent revenues paid to Lessee, plus<br/>                                         16% of property tax, and<br/>                                         insurance recoveries paid by subtenants to lessee and as provided under current lease terms.</p> <p>Percentage rents shall be subject to renegotiation to Fair Market Value 20 years after the exercise of the Option and every 10 years thereafter.</p> |

| BOARD POLICY ITEM  | TERMS  |
|--|--|
| 5. PARTICIPATION IN<br>(a) SALE AND<br>(b) REFINANCE         | <p>(a) Sale Participation: Greater of 5% (provided that any sale during the first 10 years after exercise of the Option shall be for an amount at least equal to 105.26% of Lessee's cost) of Gross Proceeds or 20% of Net Profit (<b>Exhibit D</b>) upon assignment of leasehold.</p> <p>(b) Refinance Participation: 20% of net loan proceeds not reinvested in leasehold.</p> |
| 6. COUNTY<br>ADMINISTRATIVE<br>COSTS                         | - Lessee agrees to reimburse County for costs associated with extension negotiations, option and lease preparation including all appraisal, consultant and legal costs.  |
| 7. COUNTY INCOME<br>CONTINUITY                               | - Minimum rent to be adjusted when lessee exercises option to extend lease to equal \$750,000 per year for the first five lease years and in the sixth year and thereafter to 75% of previous 3 years' average total annual rent paid to County; thereafter as provided in Paragraph 4, above.   |
| 8. RIGHT TO<br>RECAPTURE                                     | - Lessee will provide County with a right to purchase the leasehold interest if lessee desires to either assign or sell a controlling interest in Lessee ( <b>Exhibit E</b> ).   |
| 9. REMOVAL OF<br>LEASEHOLD<br>IMPROVEMENTS AT<br>TERMINATION | - 10 years prior to lease expiration, lessee shall provide County a report estimating the cost of removal of all improvements at the termination of the lease. At the County's option, lessee to establish a funding method approved by County to pay for such removal.  |
| 10. ARBITRATION  | - Arbitration will use rent-a-judge procedure. "Baseball" type arbitration provision.  |

| BOARD POLICY ITEM                        | TERMS   |
|--|---|
| 11. LEASE ASSIGNMENT - DISCLOSURE ISSUES | <ul style="list-style-type: none"> <li>- Lease assignment and ownership disclosure requirements in accord with standard County policy (<b>Exhibit F</b>).</li> </ul>  |
| 12. LEASE ADMINISTRATIVE ITEMS:          | <ul style="list-style-type: none"> <li>- A 6% late charge after the 5<sup>th</sup> day plus interest at Prime + 3% for any late payments from due date until paid.</li> <li>- A security deposit equal to 3 month's minimum rent, reset every 3 years. If after 3 years the lessee has no defaults and/or maintenance deficiencies that were not cured within the stated cure period or extension thereto, the security deposit shall be reduced to 2 month's rent and reset every three years with the same default test applicable for each subsequent 3-year period.</li> <li>- Insurance levels set initially at execution of restated lease and renegotiated to market levels on each 5<sup>th</sup> anniversary date.</li> <li>- County to maintain approval rights over construction plans and specifications (<b>Exhibit G</b>).</li> <li>- CPA certification of gross revenue and financial statements prepared by a CPA to be presented to the County within 6 months after the end of each lessee's fiscal year (<b>Exhibit H</b>).</li> </ul> |
| 13. DOCKMASTER                           | <ul style="list-style-type: none"> <li>- Not applicable</li> </ul>  |
| 14. PROMENADE                            | <ul style="list-style-type: none"> <li>- Not applicable</li> </ul>  |
| 15. APPRAISAL                            | <ul style="list-style-type: none"> <li>- Negotiated terms of lease subject to comprehensive appraisal per Asset Management Strategy adopted by Board of Supervisors.</li> </ul>   |

| BOARD POLICY ITEM   | TERMS  |
|---|--|
| 16. MAINTENANCE   | <p>- Lessee to maintain improvements in conformity with Marina del Rey standards as set forth in new lease document. For all cited maintenance deficiencies that remain uncured after the specified notice and cure periods, liquidated damages in the amount of \$100 per day (triennially adjusted for CPI), per item, shall be assessed and paid immediately or released from the security deposit (in which case lessee must fully reinstate security deposit amounts so used), until said items are cured, without prejudice to County's default rights.</p>  |
| 17. ENTITLEMENTS:<br>SITE COVERAGE,<br>HEIGHT & LAND USES | <p>- Lessee must obtain all regulatory approvals within 6 months of grant of option by Board of Supervisors. If lessee is unable to obtain all of the necessary approvals within the 6-month requirement, the Director shall grant one 6-month extension if lessee can demonstrate it has diligently pursued those approvals. The foregoing 6-month (or 12-month) period is subject to litigation and appeal tolling provisions set forth in Item 2 above.</p> <p>- Density, site coverage, open space, view corridor, building height, entitlements and land uses are subject to lessee obtaining all County and Coastal Commission planning and entitlement approvals, including that of Design Control Board.</p> |

| BOARD POLICY ITEM              | TERMS  |
|--------------------------------|--|
| 18. REPOSITIONING AND UPGRADES | <p>- Lessee covenants that the Premises and all improvements (other than the premises occupied by Ralph's Grocery -the "Grocery Store Premises") shall be maintained as a first class shopping center comparable to other first class shopping centers in the West Los Angeles area, which are similar in size and nature to the Premises. Such obligation shall include requisite upgrades to building facades and storefronts (other than to the Grocery Store Premises and the premises of any regional or national tenants whose lease terms stipulate that such tenant has control over the façade and/or storefront and/or signage of its premises, provided, however, that Lessee shall use commercially reasonable efforts to arrange for such tenants to perform such upgrades, and on turn-over of the Grocery Store and such other premises, Lessee shall be obligated to upgrade or cause to be upgraded the façade and storefronts of the Grocery Store Premises and such other premises), roofs, common area lighting, common area landscaping and irrigation systems and common area vehicle parking and striping surfaces, which upgrades shall be completed no later than the end of the 20th anniversary of the effective date of the Amended and Restated Lease, and by the end of each 15 years thereafter. Minimum expenditures for the first scheduled upgrade shall be in an amount equal to 1.5% of leasehold gross revenue for years 1 through 5 of the lease term and 2% of such gross revenue thereafter, less any approved capital expenditures incurred after lease year 10. The minimum expenditure for subsequent scheduled upgrades shall be in an amount equal to not less than 2% of leasehold gross revenue computed from the date of the previously required outside upgrade completion date. All such gross revenue percentages are exclusive of rent from Ralphs, unless and until the expiration or other termination of the Ralphs sublease. Such expenditure requirements shall be enforceable as a lease payment obligation.</p> |

| BOARD POLICY ITEM         | TERMS   |
|---------------------------|---|
| 19. OBLIGATION TO REBUILD | <p>- In the event that: (a) the improvements at the shopping center are damaged or destroyed, unless such damage and destruction resulted from a cause not required to be insured against by the lease, then only in the event that all, or substantially all, of the improvements are damaged or (b) within the last 5 years of the lease term the improvements at the shopping center are damaged, destroyed or condemned to the extent of at least 25% of the then cost of replacement; or (c) due to condemnation at least 25% of the then cost of replacement of the center is taken or the parking ratio at the shopping center is decreased below 4.6 parking spaces per thousand square feet of floor area, Lessee shall have the right to assign all insurance and condemnation proceeds to the County and terminate the lease. In all other instances, the lessee shall have the obligation to rebuild and shall have no right or option to terminate the Ground Lease.</p> |

Attachments:

- Exhibit A – Renovation Plan
- Exhibit B – Force Majeure
- Exhibit C – Permitted Capital Expenditures
- Exhibit D – Net Profit
- Exhibit E – Right To Recapture
- Exhibit F – Lease Assignment
- Exhibit G – Construction Approval
- Exhibit H – Accounting

**EXHIBIT A**

PARCEL 50T – MARINA WATERSIDE CENTER  
LEASE EXTENSION OPTION  
LESSEE TO BE CARUSO AFFILIATED HOLDINGS

DEVELOPMENT PLAN

(attached)



**TERM SHEET EXHIBIT A – PARCEL 50T**

December 3, 2003

|  |  |
|--|--|
| <b>Term Sheet<br/>Template Item</b>  | <b>Lessee Proposal<br/>Parcel 50T</b>  |
| <b>1) SCOPE OF WORK</b>  |  |
| <p><b>A reasonably detailed, written narrative description of the work to be done, including each of the following:</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> <b>All new construction and renovation</b></li><li><input type="checkbox"/> <b>Timing for the start of the work</b></li><li><input type="checkbox"/> <b>Timing for the completion of the work</b></li></ul> <p><b>The narrative shall include all applicable components of the project, grouped as set forth below.</b></p> |  |
| <b>a) Commercial and Retail</b>  |  |
| <ul style="list-style-type: none"><li><b>• Demolition<br/>(of existing<br/>improvements prior<br/>to commencing<br/>work)</b></li></ul>  | <p>Demolition will include:</p> <ol style="list-style-type: none"><li>1. Removal of portions of the existing parking lot paving and all parking lot striping</li><li>2. Removal of portions of curbs, gutters, landscaping and paving at entry drives</li><li>3. Removal of primary sidewalks</li><li>4. Removal of some site signage</li><li>5. Removal of all light fixtures that cannot be rehabilitated</li><li>6. Demolish portions of the in-line retail building and Lincoln Ave loading/service areas to allow for the Ralph's expansion.</li><li>7. Demolish portions of the existing in-line retail covered arcade to allow for the façade renovation as depicted in the attached rendering</li></ol> <p>All work is to be sequenced to allow continued operation of the center.</p> |

| <b><i>Term Sheet<br/>Template Item</i></b>   | <b><i>Lessee Proposal<br/>Parcel 50T</i></b>   |
|--|--|
| <ul style="list-style-type: none"> <li>• <b>New building construction</b></li> </ul> | <p><i>Redevelopment Program</i></p> <p>The Redevelopment will consist of a renovation of the existing shopping center, as further described in Item #1 of this term sheet, "Redevelopment." The Redevelopment shall include the remodeling of the exiting Ralphs market to operate as a Ralphs FreshFare or other equivalent high quality store concept. Subject to certain conditions, which are described in the Restated Lease, the Redevelopment shall include an approximate 9,500 square foot expansion of the existing Ralphs market, which includes an approximate 5,300 square foot expansion of footprint area. The Redevelopment shall be of a quality at least comparable to other first class shopping centers in West Los Angeles, the Courtyard at Calabasas, and the Encino/Hayvenhurst project. Timing of the Redevelopment is as described in Restated Lease.</p> <p>New building construction for the shopping center's anchor tenant, Ralphs, is described under the terms of the tenant sublease. The proposed expansion is subject to a number of contingencies and is therefore not certain. If the proposed expansion does occur, it will consist of expansion into three storefronts contiguous to Ralphs, together with construction of an additional new footprint area of approximately 5,300 square feet, resulting in a total store expansion of approximately 9,500 square feet. If the proposed expansion does not occur, no new additional building footprint area is planned.</p> <p>See Exhibit A-6, "Parcel 50T Scope of Work Narrative"</p> <p><i>Unit Count</i></p> <p>The area of the existing shopping center will not change, except as described above. However, the number of storefronts may increase or decrease in the normal course of tenant turnover.</p> |

| <b><i>Term Sheet<br/>Template Item</i></b>  | <b><i>Lessee Proposal<br/>Parcel 50T</i></b>   |
|---|--|
| <ul style="list-style-type: none"> <li>• <b>Remodeled building exteriors</b></li> </ul> | <p>The Redevelopment will consist of a renovation of the existing shopping center, as further described in Item #1 of this term sheet, "Redevelopment." The Redevelopment shall include the remodeling of the exiting Ralphs market to operate as a Ralphs FreshFare or other equivalent high quality store concept. Subject to certain conditions, which are described in the Restated Lease, the Redevelopment shall include an approximate 9,500 square foot expansion of the existing Ralphs market, which includes an approximate 5,3000 square foot expansion of footprint area. The Redevelopment shall be of a quality at least comparable to other first class shopping centers in West Los Angeles, the Courtyard at Calabasas, and the Encino/Hayvenhurst project. Timing of the Redevelopment is as described in Restated Lease.</p> <p>See Exhibit A-1, "Parcel 50T Conceptual Illustration"</p> <p>Also see Exhibit A-2, "Parcel 50T Building Exteriors Concept"</p> <p>Also see Exhibit A-6, "Parcel 50T Scope of Work Narrative"</p> |

| <b><i>Term Sheet<br/>Template Item</i></b>  | <b><i>Lessee Proposal<br/>Parcel 50T</i></b>   |
|---|--|
| <ul style="list-style-type: none"> <li>• <b>Remodeled building exteriors (continued)</b></li> </ul> | <p><i>Particulars</i></p> <p>Rework in-line retail building facades as depicted in the attached rendering. Parking lot side of the building to include:</p> <ol style="list-style-type: none"> <li>1. Add faux 2nd story façade elements to emulate an Italianate residential scale including: backlit windows, shutters, flower boxes and/or potted plants, balcony treatments, wrought iron railings and/or tile roofs</li> <li>2. Add new cornice mouldings and other decorative trims</li> <li>3. Add awnings and canopies</li> <li>4. Add decorative lighting in selected locations</li> <li>5. Box out selected existing round columns and add brick veneers</li> <li>6. Add new storefronts in selected areas</li> <li>7. Add new tenant signage in selected locations</li> <li>8. Rework/repair/skim coat existing plaster (to remain) to be consistent with newly constructed façade elements</li> <li>9. New paint</li> <li>10. New lighting throughout</li> </ol> <p>Rework of in-line retail building facades on the project perimeter to include:</p> <ol style="list-style-type: none"> <li>1. Add new tenant signage</li> <li>2. Add new advertising panels integral with the project architecture</li> <li>3. Add trellis structures, landscaping, low walls and other screening elements to visually reduce the existing building impacts on city streets.</li> <li>4. Box out selected existing round columns and add brick veneers</li> <li>5. New paint</li> <li>6. New lighting throughout</li> </ol> <p>Rework Ralph's exterior elevations to dovetail with the in-line retail building design</p> |

| <b><i>Term Sheet<br/>Template Item</i></b>  | <b><i>Lessee Proposal<br/>Parcel 50T</i></b>   |
|---|--|
| <ul style="list-style-type: none"> <li>• <b>Remodeled building interiors</b></li> </ul>             | Not applicable, since the shopping center contains only tenant-specified interiors. A number of interior renovations will be completed in connection with the placement of new tenants, however, those renovations are excluded from specific consideration.   |
| <ul style="list-style-type: none"> <li>• <b>Remodeled interior building common areas</b></li> </ul> | Not applicable, since the shopping center contains no interior common areas. A number of interior renovations will be completed in connection with the placement of new tenants, however, those renovations are excluded from specific consideration.  |
| <ul style="list-style-type: none"> <li>• <b>Remodeled exterior building common areas</b></li> </ul> | <p>The Redevelopment will consist of a renovation of the existing shopping center, as further described in Item #1 of this term sheet, "Redevelopment." The Redevelopment shall include the remodeling of the exiting Ralphs market to operate as a Ralphs FreshFare or other equivalent high quality store concept. Subject to certain conditions, which are described in the Restated Lease, the Redevelopment shall include an approximate 9,500 square foot expansion of the existing Ralphs market, which includes an approximate 5,3000 square foot expansion of footprint area. The Redevelopment shall be of a quality at least comparable to other first class shopping centers in West Los Angeles, the Courtyard at Calabasas, and the Encino/Hayvenhurst project. Timing of the Redevelopment is as described in Restated Lease.</p> <p>See Exhibit A-1, "Parcel 50T Conceptual Illustration"</p> <p>Also see Exhibit A-3, "Parcel 50T Exterior Building Common Areas Concept"</p> <p>Also see Exhibit A-6, "Parcel 50T Scope of Work Narrative"</p> |

| <b><i>Term Sheet<br/>Template Item</i></b>  | <b><i>Lessee Proposal<br/>Parcel 50T</i></b>   |
|---|--|
| <ul style="list-style-type: none"> <li>• <b>Remodeled exterior building common areas (continued)</b></li> </ul> | <p><i>Particulars</i></p> <p>The goal is to create within the Waterside project a more inviting outdoor customer experience with patio dining areas and intimate courtyard/seating areas. Key to this is to open areas of the primary sidewalks to the sky by eliminating portions of the covered arcades. Existing space constraints present a challenge but will allow a series of small scale sunlit exterior spaces to interrupt what are currently unpleasant covered arcades.</p> <ol style="list-style-type: none"> <li>1. Primary sidewalks to be new integral color concrete with hand-seeded accents of mica and pyrite</li> <li>2. Add stone borders and paving accent areas to primary sidewalks</li> <li>3. Secondary sidewalks to be sandblasted to a consistent clean appearance then sealed</li> <li>4. Add potted plants, landscaping areas and vine pockets</li> <li>5. Add small courtyard/seating area with water feature, landscaping and decorative/enhanced lighting</li> <li>6. Add/replace site furnishings including: Tables, chairs, umbrellas, benches, trash cans and ash urns.</li> <li>7. Redesign and redo all parking lot striping</li> <li>8. Rework all project vehicular drive entry's to add landscaping, monument signage, decorative or enhanced lighting and for improved traffic flow.</li> </ol> |

| <b>Term Sheet<br/>Template Item</b>                                    | <b>Lessee Proposal<br/>Parcel 50T</b>  |
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| <ul style="list-style-type: none"> <li>• <b>Landscaping</b></li> </ul> | <p>The Redevelopment will consist of a renovation of the existing shopping center, as further described in Item #1 of this term sheet, "Redevelopment." The Redevelopment shall include the remodeling of the exiting Ralphs market to operate as a Ralphs FreshFare or other equivalent high quality store concept. Subject to certain conditions, which are described in the Restated Lease, the Redevelopment shall include an approximate 9,500 square foot expansion of the existing Ralphs market, which includes an approximate 5,300 square foot expansion of footprint area. The Redevelopment shall be of a quality at least comparable to other first class shopping centers in West Los Angeles, the Courtyard at Calabasas, and the Encino/Hayvenhurst project. Timing of the Redevelopment is as described in Restated Lease.</p> <p>See Exhibit A-1, "Parcel 50T Conceptual Illustration"</p> <p>Also see Exhibit A-4, "Parcel 50T Landscaping Concept"</p> <p>Also see Exhibit A-6, "Parcel 50T Scope of Work Narrative"</p> <p><i>Particulars</i></p> <ol style="list-style-type: none"> <li>1. Add landscaping at small fountain courtyard seating area, vehicular entry drives and along primary sidewalks</li> <li>2. Add vine pockets at new column enclosures</li> <li>3. Add potted plants along primary sidewalks</li> <li>4. Add window boxes and/or potted plants on 2<sup>nd</sup> floor faux treatments</li> <li>5. Rework existing landscaping to a consistent quality with the newly added landscaping</li> <li>6. prune existing trees</li> </ol> |

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| <b>Term Sheet<br/>Template Item</b>   | <b>Lessee Proposal<br/>Parcel 50T</b>   |
| <b>b) Marina</b>  |   |
| <ul style="list-style-type: none"> <li>• <b>Replacement of docks and slips, including design and materials</b></li> </ul>                                     | This item does not apply because Parcel 50T is not adjacent to the water and there currently are no slips on the property.                        |
| <ul style="list-style-type: none"> <li>• <b>Retention of existing slip count, including slip count before and after by slip size</b></li> </ul>               | This item does not apply because Parcel 50T is not adjacent to the water and there currently are no slips on the property.                        |
| <ul style="list-style-type: none"> <li>• <b>Retention of marine commercial facilities, including area count before and after for each category</b></li> </ul> | This item does not apply because Parcel 50T is not adjacent to the water and there are currently no marine commercial facilities on the property. |
| <b>c) Promenade</b>   |   |
| <ul style="list-style-type: none"> <li>• <b>Walkway design and materials</b></li> </ul>   | This item does not apply because Parcel 50T is not adjacent to the water.   |
| <ul style="list-style-type: none"> <li>• <b>Fencing design and materials</b></li> </ul>   | This item does not apply because Parcel 50T is not adjacent to the water.   |
| <ul style="list-style-type: none"> <li>• <b>Lighting design and materials</b></li> </ul>  | This item does not apply because Parcel 50T is not adjacent to the water.   |



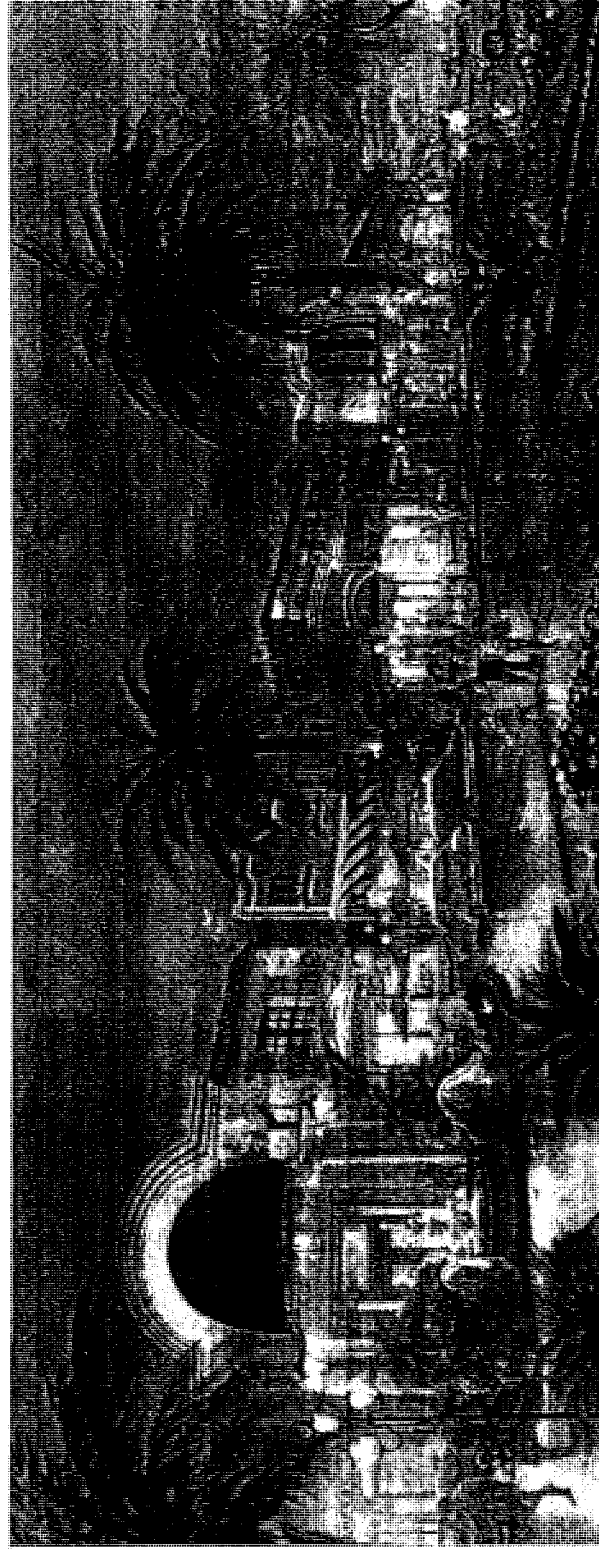
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| <b>Term Sheet<br/>Template Item</b>  | <b>Lessee Proposal<br/>Parcel 50T</b>  |
| <b>d) Signage</b>  |  |
| <ul style="list-style-type: none"> <li><b>New signage program</b></li> </ul> | <p>The Redevelopment will consist of a renovation of the existing shopping center, as further described in Item #1 of this term sheet, "Redevelopment." The Redevelopment shall include the remodeling of the exiting Ralphs market to operate as a Ralphs FreshFare or other equivalent high quality store concept. Subject to certain conditions, which are described in the Restated Lease, the Redevelopment shall include an approximate 9,500 square foot expansion of the existing Ralphs market, which includes an approximate 5,3000 square foot expansion of footprint area. The Redevelopment shall be of a quality at least comparable to other first class shopping centers in West Los Angeles, the Courtyard at Calabasas, and the Encino/Hayvenhurst project. Timing of the Redevelopment is as described in Restated Lease.</p> <p>As part of the renovation, a signage renovation program will also be completed. The new signage program will consist of a significant upgrade to the existing signage. The signage program will be complimentary to and consistent with the planned renovation.</p> <p>See Exhibit A-1, "Parcel 50T Conceptual Illustration"</p> <p>Also see Exhibit A-5, "Parcel 50T Signage Program Concept"</p> <p>Also see Exhibit A-6, "Parcel 50T Scope of Work Narrative"</p> |

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| <b>Term Sheet<br/>Template Item</b>  | <i>Lessee Proposal<br/>Parcel 50T</i>  |
| <b>2) PLANS &amp; DRAWINGS</b>   |  |
| <b>Preliminary plans for all work to be done</b>   |  |
| <b>a) Site Plan</b>  |  |
| <ul style="list-style-type: none"> <li><b>Reduced color site plans (8.5x11 or 11x17), showing work described above, including all structures, hardscape, promenade, landscaping and slips</b></li> </ul> | <p>See Exhibit A-1, "Parcel 50T Conceptual Illustration"</p> <p>Also see Exhibit A-6, "Parcel 50T Scope of Work Narrative"</p>   |
| <b>b) Building Elevation</b>   |  |
| <ul style="list-style-type: none"> <li><b>A reduced color elevation (8.5x11 or 11x17) drawing that shows all new and/or renovated building elevations</b></li> </ul>                                     | <p>See Exhibit A-1, "Parcel 50T Conceptual Illustration"</p> <p>Also see Exhibit A-2, "Parcel 50T Exterior Concept"</p> <p>Also see Exhibit A-3, "Parcel 50T Exterior Building Common Areas Concept"</p> <p>Also see Exhibit A-5, "Parcel 50T Signage Program Concept"</p> <p>Also see Exhibit A-6, "Parcel 50T Scope of Work Narrative"</p> |
| <b>c) Landscaping Plan</b>   |  |
| <ul style="list-style-type: none"> <li><b>If not already included in the above materials</b></li> </ul>  | <p>See Exhibit A-1, "Parcel 50T Conceptual Illustration"</p> <p>Also see Exhibit A-4, "Parcel 50T Landscaping Concept"</p> <p>Also see Exhibit A-6, "Parcel 50T Scope of Work Narrative"</p>   |

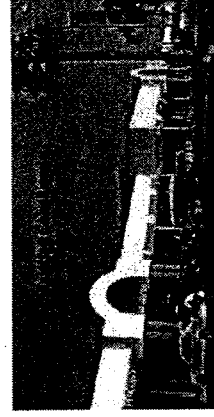
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| <b><i>Term Sheet<br/>Template Item</i></b>  | <b><i>Lessee Proposal<br/>Parcel 50T</i></b>  |
| <b>d) Dock Construction Plan</b>  |   |
| <ul style="list-style-type: none"> <li>• <b>Dock construction plan, including physical layout of docks and slips</b></li> </ul> | This item does not apply because Parcel 50T is not adjacent to the water. There are no slips. |

|   |   |                  |             |                    |            |                     |            |                     |  |                |                    |       |             |
|---|---|------------------|-------------|--------------------|------------|---------------------|------------|---------------------|--|----------------|--------------------|-------|-------------|
| <b>Term Sheet<br/>Template Item</b>   | <b>Lessee Proposal<br/>Parcel 50T</b>   |                  |             |                    |            |                     |            |                     |  |                |                    |       |             |
| <b>3) BUDGET</b>  |   |                  |             |                    |            |                     |            |                     |  |                |                    |       |             |
| <b>a) Budget worksheet</b>  |   |                  |             |                    |            |                     |            |                     |  |                |                    |       |             |
| <ul style="list-style-type: none"> <li><b>Estimated cost for all of the work agreed upon</b></li> </ul> | <p>Lessee shall expend no less than \$8.865 million, including any contribution from Ralphs (Alpha Beta Company), for the cost of the Redevelopment. If the Redevelopment includes the Ralphs expansion, then the investment shall be increased to \$10.865 million, including funds contributed by Ralphs (Alpha Beta Company).</p> <p><i>Preliminary Budget</i></p> <table> <tr> <td>Building Shell -</td><td>\$2,100,000</td></tr> <tr> <td>Site Improvements-</td><td>\$ 500,000</td></tr> <tr> <td>General Conditions-</td><td>\$ 400,000</td></tr> <tr> <td>Soft Costs/Overhead</td><td></td></tr> <tr> <td>Dev. Fees/Etc.</td><td><u>\$1,500,000</u></td></tr> <tr> <td>Total</td><td>\$4,500,000</td></tr> </table> | Building Shell - | \$2,100,000 | Site Improvements- | \$ 500,000 | General Conditions- | \$ 400,000 | Soft Costs/Overhead |  | Dev. Fees/Etc. | <u>\$1,500,000</u> | Total | \$4,500,000 |
| Building Shell -  | \$2,100,000   |                  |             |                    |            |                     |            |                     |  |                |                    |       |             |
| Site Improvements-  | \$ 500,000  |                  |             |                    |            |                     |            |                     |  |                |                    |       |             |
| General Conditions-   | \$ 400,000  |                  |             |                    |            |                     |            |                     |  |                |                    |       |             |
| Soft Costs/Overhead   |   |                  |             |                    |            |                     |            |                     |  |                |                    |       |             |
| Dev. Fees/Etc.  | <u>\$1,500,000</u>  |                  |             |                    |            |                     |            |                     |  |                |                    |       |             |
| Total   | \$4,500,000   |                  |             |                    |            |                     |            |                     |  |                |                    |       |             |

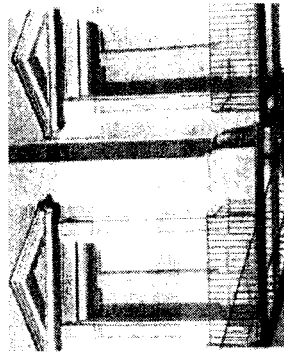
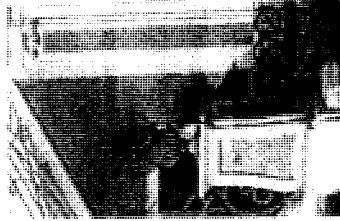
**Exhibit A-1**  
**Parcel 50T Conceptual Illustration**



Generally indicative of the character of the planned renovation.



**Exhibit A-2  
Parcel 50T Building Exteriors Concept**



Existing conditions

The character of the architectural elements, as illustrated by these conceptual photos, is to be implemented in the planned renovation. However, the specific geometric examples are not necessarily to be included.

**Exhibit A-3  
Parcel 50T Exterior Common Areas Concept**



Concept only.

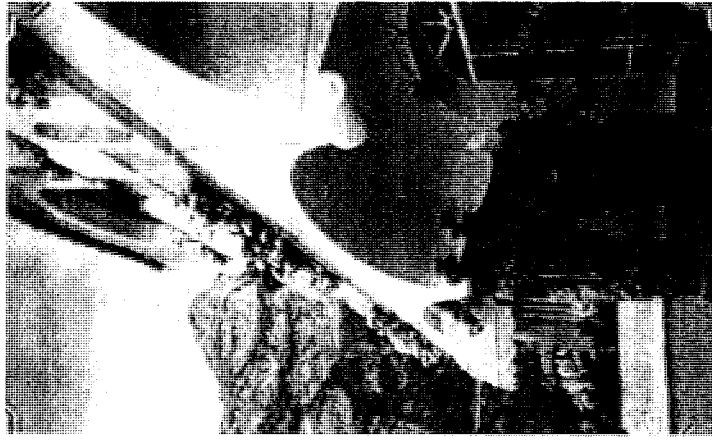


Concept only.



Existing conditions

**Exhibit A-4  
Parcel 50T Landscaping Concept**



Concept only.



Concept only.



Existing Conditions



**Exhibit A-5  
Parcel 50T Signage Program Concept**



Concept only.

Exhibit A-6  
Parcel 50T Scope of Work Narrative



MEMORANDUM  
CARUSO AFFILIATED HOLDINGS

|          |  |
|----------|--|
| To:      | Roger Molero                             |
| From:    | Dave Williams                            |
| Date:    | November 12, 2003                        |
| Subject: | Marina Waterside Scope of Work Narrative |

As per your request the following represents an outline of the scopes of work in the Marina Waterside Conceptual Budget.

SITEWORK

Drive Lane Reconfiguration:  
Complete the following: Demolition, removal and reconfiguration of the drive entry off of Admiralty, such that the currently hazardous intersection of parking aisles and off street traffic is mitigated. The end result will create a signature front door to the project incorporating landscape elements, architectural lighting and monument signage.

Sidewalks:  
Demolish and replace all existing sidewalks along primary building facades. Replace sidewalk with finish of colored and seeded aggregate concrete, with two-foot wide granite paving band at each column along the sidewalk. Secondary sidewalks shall be sandblasted and sealed.

Landscape and Landscaping Lighting:  
Demolish and install planter pockets and decorative pots in columns or neutral pans and finish with drainage & flowering plants/vines and irrigation to each planter area. Remove and replace perimeter landscaping along Admiralty and Fiji. Remove and replace planter materials and finish new lighting in each planter island planter. Add supplemental landscaping and perimeter lighting along the Lincoln Blvd. frontage to create service area and/or energy back of buildings.

Entrance Plaza:  
Construct new plaza with Italianate central fountain and surrounding planters w/ low walls and decorative cap. Replace existing concrete with limestone paving throughout the area.



MEMORANDUM  
CARUSO AFFILIATED HOLDINGS

Parking Lot:  
Stump out and re-slope entire parking lot surface. Remove and replace existing parking lot lighting with more appealing fixtures furnish and install new directional signage.

Electrical:  
Upgrade primary electrical services.

SHELL & CORE

Primary Facades (Facing parking field):  
Demolish and completely reconstruct the primary building facade along the entire length. So as to provide a varied plan profile, both pushing out and pulling in sections, installing features such as second story balconies, awnings and windows as well as varying the profile and roofing materials i.e. clay tile copper standing seam, along the facade, construct a new clock tower, install varying facade finishes with plaster, brick and stone veneers, thereby enriching each individual tenant space with its own distinct character and aesthetic appeal. Install new architectural accent lighting, wall mounted sources, decorative pedestrian poles and pendant light fixtures throughout. Upgrade tenant signage and storefronts.

Secondary (Service) Facades:  
Repair and upgrade all portions of the building visible from the streets. The primary goal, however, will be to screen these service oriented sides of the project with landscaping, low walls, monument signs, trellis structures and other devices to camouflage or obscure unsightly areas.

Project Identity and Information/Light/Fabric:  
Accommodate the "Gateway Criteria" to designate Marina Waterside with established master plan principles. Enhance project context with landscaping, monument sign features and architectural lighting to reflect overall project quality and attention to detail.

**EXHIBIT C**  
**ASSIGNMENT STANDARDS**

These standards are to apply to proposed transactions requiring County's consent pursuant to Section 11.2 of the Lease. These standards and conditions are not to apply to (a) an assignment for the purpose of securing leasehold financing of the parcel by an encumbrance holder approved by County, (b) the transfer of the leasehold in connection with a foreclosure or transfer in lieu of foreclosure by an approved lender, or (c) the first transfer by that encumbrance holder if it has acquired the leasehold through a foreclosure or a transfer in lieu of foreclosure.

1. The proposed transferee must have a net worth determined to be sufficient in relation to the financial obligations of the lessee under the Lease (equal to at least six (6) times the total Annual Minimum Rent and Percentage Rent due to County for the most recent fiscal year). A letter of credit, cash deposit, guarantee from a parent entity or participating individual(s) having sufficient net worth or similar security satisfactory to the County may be substituted for the net worth requirement.
2. The proposed assignee must have adequate experience in the development (if contemplated), operation and management of the type(s) of Improvements existing on or to be constructed on the Premises, or provide evidence of contractual arrangements for these services with providers of such services satisfactory to the County. If County's approval of the transaction is based on the identity of third party service providers, then subsequent changes in such service providers or changes to the contractual arrangements on which such services are provided must be approved by the County. All such approvals of the County will not be unreasonably withheld or delayed.
3. The individual or individuals who will acquire Lessee's interest in this Lease or the Premises, or who own the entity which will so acquire Lessee's interest, irrespective of the tier at which such individual ownership is held, must be of good character and reputation and, in any event, shall have neither a history of, nor a reputation for: (1) discriminatory employment practices which violate any federal, state or local law; or (2) non-compliance with environmental laws, or any other legal requirements or formally adopted ordinances or policies of the County.
4. The price to be paid for the acquired interest shall not, in County's reasonable judgment, result in a financing obligation of the proposed transferee which jeopardizes the Lessee's ability to meet its rental obligations to the County. Market debt service coverage ratios and leasehold financial performance, at the time of the Proposed Transfer, will be used by County in making this analysis.
5. If the proposed transferee is an entity, rather than an individual, the structure of the proposed transferee must be such that (or the assignee must agree that) the County will have reasonable approval rights regarding any future direct or indirect transfers of interests in the entity or the applicable lease, as required under this Lease; provided however, that a transfer of ownership of a publicly

held parent corporation or other entity of Lessee that is not done primarily as a transfer of this leasehold will not be subject to County approval.

6. The terms of the proposed assignment will not detrimentally affect the efficient operation or management of the leasehold, the Premises or any Improvements thereon.
7. The proposed transferee does not have interests which, when aggregated with all other interests granted by County to such transferee, would violate any policy formally adopted by County restricting the economic concentration of interests granted in the Marina del Rey area, which is uniformly applicable to all Marina del Rey lessees.
8. The transfer otherwise complies with the terms of all ordinances, policies and/or other statements of objectives which are formally adopted by County and/or the County Department of Beaches and Harbors and which are uniformly applicable to persons or entities with rights of occupancy in any portion of Marina del Rey.

**EXHIBIT D**  
**LOCATION OF COUNTY'S SIGN AND SIDEWALK RESERVATION**

*To enrich lives through effective and caring service*

December 4, 2003



TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director

A handwritten signature in dark ink, appearing to read "Stan Wisniewski", is written over the printed name.

SUBJECT: ITEM 6a - ONGOING ACTIVITIES REPORT

**BOARD OF SUPERVISORS' ACTIONS ON ITEMS RELATING TO MARINA DEL REY**

At its December 2, 2003 meeting, the Board of Supervisors approved and instructed the Chairman to sign the "Amendment to and Assignment of Option To Amend Lease Agreements (Parcels 12R and 15U)" to facilitate redevelopment on Parcels 12R (Deauville Marina) and 15U (Bar Harbor Marina), Marina del Rey and: a) implement joint assignment of the original Option to Amend Lease Agreements to two new lessee entities; b) extend the Option expiration date by 60 days, with provision for an additional 60-day extension at the Director's discretion; and, c) modify the Amended and Restated Lease Agreement expiration dates and the joint and several obligation provisions with respect to the completion of construction of the redevelopment on Parcels 12R and 15U, and add provisions for price controls, liquidated damages for maintenance deficiencies and for provision of a water taxi docking area. This item was previously considered and recommended by your Commission.

At its November 18, 2003 meeting, the Board of Supervisors referred back to the Department the Chief Administrative Officer and the Director's recommendation to proceed with exclusive negotiations with Almar Management/Pacific Marina Development for an option and long-term lease for development of Parcels 52R and GG, Marina del Rey. The Department has responded to questions relating to the proposed project and we will keep you advised on this project. This item was previously considered and recommended by your Commission.

Also at its November 18, 2003 meeting, the Board of Supervisors reappointed Carole Stevens and waived her limitation of length of service requirement for the Small Craft Harbor Beach Commission, pursuant to County Code Section 3.100.030A.

**DESIGN CONTROL BOARD MINUTES**

The draft minutes for the Design Control Board meeting of November 20, 2003 are in your packet.

SW:tlh

# DRAFT

## MINUTES OF MARINA DEL REY DESIGN CONTROL BOARD

November 20, 2003

Department of Beaches and Harbors  
Burton Chace County Park  
Community Building – 13650 Mindanao Way  
Marina del Rey, CA 90292

Members Present: Susan Cloke, First District, Chair  
David Abelar, Second District  
Katherine Spitz, Third District  
Jackie Ingon, Fourth District

Members Absent: Tony Wong, Fifth District

Department Present: Joe Chesler, Chief, Planning Division  
Julie Cook, Planner  
LaTrina Hancock, Secretary

County Staff Present: Kevin Johnson, Regional Planning  
Tom Faughnan, County Counsel

Guest Present: Jack Baringer, AT&T Wireless  
Al Udwin, Archstone Communities  
Marianne Liggett, Archstone Communities  
Gustaf Soderbergh, Archstone Communities  
Mike Ishikawa, Archstone Communities

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1. Call to Order & Absences

Ms. Cloke called the meeting to order at 2:05 p.m. Ms. Ignon led the Pledge of Allegiance. **Ms. Ignon (Spitz) moved to excuse Mr. Wong from this meeting. Motion passes unanimously.**

2. Approval of Minutes from June 19, 2003 and August 21, 2003 and September 18, 2003 and October 16, 2003

Minutes held until the end of the meeting.

3. Approval of DCB Reviews #03-006

DCB Review held until the end of the meeting.

4. New Business

- A. Parcel 75/94 – Marina Professional Association – (DCB #03-015)  
Approval of rooftop cellular equipment

Jack Baringer, AT&T Wireless, provided detailed information on the proposed installation and maintenance plan.

Public Comments  
None

Ms. Ignon (Spitz) moved to approve the application as submitted. Motion passed unanimously.

- B. Parcel 102 – Kingswood Village Apartments – (DCB #03-015)  
The applicant was given time to set-up as the minutes from previous meetings were reviewed for approval.

2. Approval of Minutes from June 19, 2003 and August 21, 2003 and September 18, 2003 and October 16, 2003

**Mr. Abelar (Ignon) moved to approve the Minutes of June 19, 2003. Motion passed unanimously.**

**Mr. Abelar (Ignon) moved to approve the Minutes of August 21, 2003. Motion passed unanimously.**

**Ms. Ignon (Spitz) moved to approve the Minutes of September 18, 2003. Motion passed unanimously.**

- B. Parcel 102 – Kingswood Village Apartments – (DCB #03-015)  
Approval of major exterior renovations for the Kingswood Village Apartments including the Garden Style apartments and the tower Buildings, the clubhouse and main entry and landscaping throughout.

Ms. Cook gave an overview of the proposed improvements.

Al Udwin, Archstone Communities, briefed the Board regarding Archstone Communities past projects and introduced the Design Team for this project.

Marianne Liggett, landscape architect, explained the planting design concept, which has been divided into five site areas.



1. Main project entry on Via Marina;
2. Via Marina and Via Dolce streetscapes and perimeter landscape;
3. Courtyards of Garden Buildings 1 and 2; and Garden Buildings 3 and 4, that front on Via Marina;
4. The Tower (Building 8) and the leasing office/recreation center; and
5. Courtyards of Buildings 5, 6 and 7, in the interior of the project.

Mike Ishikawa, architect, discussed the renovation of the garden style apartments. Mr. Ishikawa briefed the Board on renovations that can be done using simple materials, changing color and texture of materials. Mr. Ishikawa explained how certain types of materials, such as wood, do not perform well in the Marina type of environment. Archstone proposed to remove all of the vertical wood pickets on the balconies, and wood siding above and below all of the windows. The windows will also be removed and replaced. The new windows will be slightly narrower, which will enhance the look of the building. Where the building is over a garage, a strong horizontal (plant? material), which will separate the garage from the apartments above and serve as a divider for the building.

Mr. Ishikawa described the color palette for the building, which the colors occur randomly throughout the project, but when the colors meet they will tie the project together. The windows will be clear but some will have tint.

Gustaf Soderbergh, architect, for the tower and the clubhouse. Mr. Soderbergh explained that the proposed clubhouse renovations would include removing the dark wood panel structures and replacing them with an exterior plaster in a light sand finish. Currently 10 feet long, the roof overhangs would be reduced by three or four feet. Windows would be added as well as existing ones replaced along with the existing doors to create a better sense of entry to the clubhouse. The clubhouse is proposed to be a true resource for the project. It will be a livable and usable gathering space for the residents and guests, including meeting rooms, a business center, and Internet café and a completely updated resident fitness center on the bottom level directly adjacent to the pool.

The tower upgrade would present the appearance of the new building. The building is extremely visible from all over the Marina and the surrounding communities. The basic concept for the exterior renovation is to create a distinctive base, middle, and top. This was done to mitigate the proceeded bulkiness of the existing building. The new appearance would be achieved through the use of colors, balcony rail treatment, high-density foam plant-ons and window surround treatments. Screen walls will be added to the building set back with a basic plaster color and contrasting reflective panels. The screen element will up lighted from the roof, giving it a glow and making it more visible at night. Ms. Cloke asked what would be reflected. Mr. Soderberg replied that the sky would be reflected to help give the building a different surface texture.

Public Comments

None

Board Comments/Questions

Ms. Cloke advised the applicants that because the Board did not receive detailed drawings, therefore, some of the proposed changes are difficult to understand.

Ms. Ignon expressed concerned about the glass balconies in regard to the residents view from the inside of the building and how the residents would feel being inside a double glass barrier. Ms. Ignon complimented the planting landscape plan. She also felt that the colors proposed were not "Marina" colors and encouraged the applicant to consider the shape and the colors of the buildings in relation to the Marina.

Mr. Abelar liked the "refreshing" design of the project.

Ms. Spitz was concerned about the proposed colors, noting that they may be soon outdated. Ms. Spitz commented that the changes would make the building less interesting and dynamic. Ms. Spitz expressed concern that the changes do not reflect the water aspect of the Marina, and that there was an over abundance of the ornamental foam and glass panels being proposed for the tower. Ms. Spitz liked the landscaping changes to the project.

Ms. Cloke stated that the applicant would have had a better direction for the project if they had been given design guidelines, which the Marina does not have. She felt that the design guidelines would have also helped with the color palette that was submitted. Ms. Cloke advised the applicant that street frontage is very important to the board and nothing was submitted that showed changes to this area. She was also concerned about lighting issues, noting that the Board does not allow commercial night lighting in the Marina. There was nothing mentioned about sustainability regarding the landscaping or architecture of the proposed project. Ms. Cloke did appreciate the applicant's thoughtful approach attention to detail and the new vitality of the project.

Ms. Cloke felt that the clubhouse should be the signature building of the project. The redesign and architecture of the building does not reflect the concept that was described by the applicant, a market place of ideas and social commerce. Ms. Cloke asked the applicant, when they return, to discuss:

- the sustainability issues,
- alternate color palettes,
- lighting (night and street lights),
- street frontage,
- the issues of water and water usage,

- design details, which must work from both externally and internally, from inside the units,
- the glass balconies (a concern), and
- not enough feeling of shade (protection and quietness), especially for the clubhouse balconies.

**Ms. Cloke (Spitz) moved to continue this item so that applicant can come back to the Board and address their concerns and questions. Motion passed unanimously. The applicant will return at the January 2004 DCB Meeting.**

The applicant asked if they could meet with the Staff and the Board to discuss what is needed to fulfill the Boards request.

Mr. Chesler advised the Board that the Design Guidelines for the Marina are in draft form and that Staff would be pleased to meet with the applicant.

#### 6. Reports from the Chief of Planning

##### B. Sea Planes

Roger Moliere, Deputy Director, reported that Sea Planes would no longer be operating at Parcel 55, which was supposed to be paved and re-fenced by the lessee. Sea Planes (which provided service to Catalina) is temporarily not in operation longer be operating and the Department does not know if operations will resume.

##### D. Project Updates (Parcel 30 – Del Rey Yacht Club Improvements, Parcel 51 Fencing and Parcel 55 Docks)

Mr. Chesler reported that the Parcel 55 Dock remains abandoned but is under negotiations with the lessee at Parcel 56, who is interested in the site. The Boards concern was the accumulated bird guano on the docks. The Director has decided to remove the shed but not the docks because of cost, and to seek a possible cleaning operation, which would not result in any discharge to the surrounding waters. Staff is taking steps to proceed with the cleaning process and it should occur within the next two weeks. The redevelopment of the docks is subject to funding and the final lease negotiations on the Fisherman's Village redevelopment.

Roger Moliere, Deputy Director, reported that the Department is trying to accelerate some of the demolition of Dock 55 with the lessee. Ms. Cloke was concerned because the Board feels that the docks are a public health hazard and nuisance.

C. Dry Boat Storage Demand

Roger Moliere, Deputy Director, reported that national and local statistic research helped with the decision of dry boat storage. The studies found that storing a boat in dry storage helps to preserve the longevity of the boat. The demand for dry storage is considered a practical matter with amenity opportunities that will increase in the near future.

Mr. Moliere advised that the dry boat storage will be located at Parcel GG and next-door at Parcel 52, which is now a parking lot. Ms. Cloke asked if the Department had a chance to interview the RFP applicant's market studies. Mr. Moliere advised that the applicant's presented the Department with their conclusions in terms of a local marketing study in terms of demands. Ms. Cloke asked how many boat would possibly use the dry storage, to which Mr. Moliere replied that about there would be 347 spaces inside and about 34 mast-up spaces outside. Ms. Cloke asked how many boats are in the marina now. Mr. Moliere responded that there are about 5,000 slips. Ms. Cloke asked how big the structure would be. Mr. Moliere advised that the building would be about 200 feet in length (two buildings) and the height would be about 40 feet. Ms. Cloke advised Mr. Moliere that the Board would be concerned about the landscape, pump-out and wash-down and other environmental issues. Applicants were advised to sink the parking below the building, provide view corridors and added additional public wash-down spaces for the public with the necessary environmental gear.

6. A. Parcel 61 – Shanghai's Red – (DCB #03-013)

The applicant submitted revised plans to replace the existing promenade surface with decorative pavers and add benches and trash receptacles. Ms. Cook noted that the applicant did not address promenade lighting in this submittal.

Pam Marcos, applicant, briefed the Board on the proposed changes. She advised that the lessee feels that that lighting is adequate for the restaurant and for the area, but advised she will be in the area of the restaurant tonight to look into the lighting conditions. Ms. Marcos asked Staff how is the existing lighting perceived to date. Mr. Chesler advised that lighting is needed for public safety issues at night and that the lighting level on the pole lights are oriented more to the patio and not to the promenade, which does not address the promenade needs. Mr. Gerami, manger, Shanghai Reds, advised that all the lights for the restaurant are turned off when the restaurant closes.

Ms. Ignon suggested the applicant place one more bench on the promenade for pedestrians.

Ms. Cloke asked why brick pavers were chosen instead of fixing the concrete. Ms. Marcos seemed to think that a solid concrete pavement was less desirable to the Board. Ms. Cloke suggested new concrete with medallions (pelicans and Marina oriented), such as the Waterfront Walk which is less expensive that the

bricks. If concrete were used, Ms. Cloke suggested that the applicant would be able to add extra amenities, such as a water fountain and better benches.

Ms. Ignon suggested more benches and other amenities on the promenade and better lighting.

Although Ms. Spitz complimented the applicant on the proposed brick pattern, she was also concerned that there was not a consistent design regarding lighting, paving, benches, and trash receptacles and that the applicant should give more thought on these items.

Mr. Abelar agreed with Ms. Spitz regarding the trash receptacles.

**Ms. Ignon (Spitz) moved to continue this submittal to give the applicant time to address the Boards concerns about: lighting, promenade paving, trash receptacles, benches and other amenities. The applicant will return at the January 2004 meeting. Motion passed unanimously.**

2. Approval of Minutes of October 16, 2003

**Mr. Abelar (Spitz) moved to approve the minutes of October 16, 2003, as submitted. Motion passed unanimously.**

*\*Mr. Abelar excused from the meeting*

6. Reports from the Chief of Planning

A. Temporary Permits

Mr. Chesler reported there were three temporary banners issued.

D. Project Updates (Including but not limited to Parcel 30-Del Rey Yacht Club improvements, Parcel 51 Fencing and Parcel 55 Docks)

Mr. Chesler reported that Parcel 30, Del Rey Yacht Club, has completed new fencing public amenities, sidewalk expansion (ADA compliant), and public restrooms, which are not finished, but accessible.

Mr. Chesler reported that the Department has issued EDAW, the Departments Urban Design Team, a notice to proceed regarding the design of Parcel 51. Contracting will begin thereafter. The interim design is not the final plan but a step in the design direction. Ms. Cloke asked what is being done with the area on the south side of the project. Mr. Chesler advised that the current proposal is a picket-style fence. Ms. Cloke advised the Board did not desire a fence that would have to be taken down in the near future. Mr. Chesler advised that the design team has been advised to look at a passive restraint for the area such as plant material. The Department's Facility Division does not support using plant material instead of fencing because of the homeless and dust from the vacant lot

will blow all over, and an unsecured open area, will become a dog waste area. Mr. Chesler advised that the Department may propose a chain link fence, as a security issue, until the plant materials grows to a size that would deter access to the area.

Ms. Cloke advised that the Board would like to look at this fence issue again, at the Boards request, because the circumstances have changed from the prior approval. County Counsel, Tom Faughnan, advised that he would have to check into the Board request, as he was unsure if the request was appropriate. **Mr. Chesler advised the Board that staff would put this item on the December agenda at the Boards request.**

E. Traffic Conditions

A four-page summary was submitted of the seven items that may be of interest to the Board, including the SR90 and the Admiralty Way Improvement Projects. Public Works has reported that they are in the consultant-seeking mode to help move forward with the environmental process. MTA has not responded to the call-for-projects regarding funding. The largest items pending are for the Parcel 12/15 permit for Deauville and Bar Harbor Marina and Parcels 111/112 apartments on Bora Bora Way.

Ms. Cloke asked the status of a letter written by Rick Weiss, County Counsel, regarding the environmental process. Mr. Chesler advised the Board that the letter will be submitted to the environmental consultant and the Board will be notified when the scooping meeting will occur and kept informed as the process is moved forward. Ms. Cloke asked Staff to have the environmental consultant attend a DCB meeting when they are ready to present.

Mr. Chesler advised that the Lincoln Corridor Task Force is meeting tonight, November 20, 2003, at 7:00 pm. All are invited.

Mr. Chesler advised that the developer responsible for the northeast corner of Mindanao Way and Lincoln Blvd (Chevron-McDonalds site) would start construction on the widening of the Lincoln Blvd corner in January or February 2004.

**Ms. Cloke advised to continue to keep this item on the agenda for further discussions.**

E. Water Shuttle Public Workshop

Mr. Chesler advised the Board that the first Water Shuttle Public Workshop was held today at Burton Chace Park. The service will be implemented again in the summer of 2004. A questionnaire was distributed for direct input so that the consultant can get advice from the Board and others.

G. Pole Signs

Mr. Chesler reported the Boards desire to move away from pole signs in the Marina because of visual blight. Staff advises applicants of the Boards position. Ms. Cloke again mentioned the need for design guidelines for the Marina, which would include the prohibition/phase-out of pole signs in the Marina. Ms. Spitz asked Staff if draft design guidelines should be available at meetings to help with assistance for applicants submitting design changes.

Ms. Cook advised that at a prior meeting it was suggested by County Counsel, Rick Weiss that an amortization period would start at the time of approval of new sign guidelines. Ms. Cloke advised that the Board wanted to have an amortization "start date" to begin in the year 2000, which would help with the discontinuance of pole signs. Ms. Cloke would like a specific time frame and language that will assist with phasing out pole signs. Mr. Faughnan advised that until a new sign standard has been approved, the Board and/or Staff couldn't set an amortization period until there is actually an adoption of a new standard. Ms. Cloke suggested continuing to put a time frame on pole sign permits as a way of communicating the Boards point of view on this matter.

H. EDAW – Urban Design Updates

Nothing new to report.

7. Election of Officers

Held until all members are present at the meeting.

*Ms. Ignon excused from the meeting.*

8. Public Comments

Pat Younis commented on the pole sign discontinuance and advised that some type of notice should be circulated well before this new signage rule is implemented to give the lessee time to prepare for new signage. Ms. Cloke and Staff advised that a notice will be circulated and that this new rule is still years away from taking affect

Meeting adjourned at 5:00 p.m.

Respectfully Submitted,

La Trina Hancock-Perry  
Design Control Board Secretary